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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 652

Technical Service Provider Assistance

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rulemaking amends the technical service provider assistance interim final rule published in the **Federal Register** on November 21, 2002, by providing a limited exception to the certification and payment requirements when the Department is partnering with State, local, or tribal governments to carry out its duties to provide technical services.

DATES: Effective date: July 9, 2003. Comments on this amendment must be received by August 8, 2003.

ADDRESSES: Send comments by mail to Melissa Hammond, Technical Service Provider Coordinator, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, or by e-mail to: *melissa.hammond@usda.gov,* Attention: Technical Service Provider Assistance. This interim final rule may also be accessed via the Internet through the NRCS homepage at *http://www.nrcs.usda.gov,* by selecting Farm Bill 2002.

FOR FURTHER INFORMATION CONTACT: Melissa Hammond, Technical Service Provider Coordinator, Strategic Natural Resource Issues Staff, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–6731; fax: (202) 720–3052; submit e-mail to: *gary.gross@usda.gov,* Attention: Technical Service Provider Assistance.

SUPPLEMENTARY INFORMATION:

Discussion

This amendment is effective on the date published in the **Federal Register** in order to address the technical service delivery needs this fiscal year. The Department follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of Departmental regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. The Department has determined that, under 5 U.S.C., 553(b)(B) good cause exists for dispensing with the notice and public comment procedures for this rule. Good cause exists because this interim final rule preserves historical means of working with governmental entities necessary to carry out technical services. Not providing for traditional relationships in carrying out technical services will result in delay in carrying out technical services and therefore implementation of the Farm Bill conservation programs.

It is not practical or in the public interest to delay implementation of the technical service provider process established as a result of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill). The 2002 Farm Bill authorized several conservation programs and provided substantial funding to implement the programs. In order to accomplish implementation, significant technical services from the private sector and public agencies are needed. Without moving expeditiously to engage public agencies in addressing this workload this fiscal year, the technical assistance funds will not be available for program participants to plan and apply needed conservation practices during the current fiscal year. This exception facilitates this critical implementation.

This limited exception does not reflect a change in the Department's commitment to developing a private sector technical service provider industry. The Department remains committed to developing private sector technical service providers. Also, this exception does not lower the technical standards public agencies must meet in order to be qualified to provide technical services through contribution agreements. Through this amendment, the Department is reaffirming its commitment to the certification process as set forth in 7 CFR part 652 while at the same time recognizing the long-standing, unique, and productive relationships the Department has had with those agencies in delivering technical services by providing for an exception to the certification process under certain limited circumstances and conditions.

This limited exception does not change the qualifications or technical requirements for providing technical services. The only change is the method used to recognize those qualifications. Public agencies have qualified technical staff to provide technical services. The limited exception in the rule allows for the efficient and effective recognition of those qualifications.

All comments submitted during this rulemaking will be considered during promulgation of a final rule.

Section 1242 of the Food Security Act, as amended by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), require that the Secretary establish a system for approving individuals and entities to provide technical assistance to implement conservation programs under Title XII of the Food Security Act of 1985.

At 7 CFR part 652, the Department set forth a process to approve individuals, private-sector entities, and public agencies as technical service providers through a technical service provider certification process. In this rulemaking, the Department is amending 7 CFR part 652 to provide for a limited exception to the certification and payment requirements when the Department is partnering with State, local, or tribal governments to assist the Department in carrying out its duties to provide technical services. This limited exception is necessary in order to continue the Department's long-standing, unique, and productive relationship with conservation districts and other governmental entities in the provision of technical assistance. This exception is only applicable when the Department is partnering with a State, local, or tribal government in carrying out the Department's duties to provide technical services. When a governmental entity seeks to compete for procurement contracts, or cooperative agreements with the

Department, or seeks to provide technical services directly to a participant as a technical service provider, the certification requirements of 7 CFR part 652 apply.

The Department has limited this exception to governmental entities and declined to expand the exception to non-governmental organizations and others for several reasons. First, the limited purpose of this amendment was to preserve and recognize the Department's long-standing, productive partnership with conservation districts and other governmental entities that have been critical in the Department's delivery of technical assistance. Government entities share the same general mission as the Department as they exist to serve the public. In addition, by carving out a limited exception, the Department also maintains the integrity of the certification process as set forth in 7 CFR part 652, which seeks to treat all parties who wish to provide technical services similarly. Moreover, the Department believes that it would be difficult to justify further expanding this exception in order to include particular groups within the private sector and not others.

During the Dust Bowl days of the 1930s, Congress declared soil and water conservation a national priority, and established the Soil Erosion Service to provide temporary emergency assistance by soil and climate experts. The success of this effort led to the establishment of a permanent agency, the Soil Conservation Service, now the Natural Resources Conservation Service (NRCS). Since the Federal government alone could not solve the problems faced by farmers and ranchers, the challenge was to determine a way to maintain a central national corps of erosion control expertise, while enabling local units of government, individuals, counties, States, and tribes to take the lead in solving the problems of soil erosion.

To encourage landowners to adopt and promote land-conservation initiatives, in 1936, the United States Department of Agriculture (USDA) created a template for State legislatures to consider in establishing conservation districts called the Standard State Soil Conservation District Law. The conservation district was classified as a ''special district.'' It had limited purposes, unlike a unit of general government, such as a county or city. The powers of the district included conducting surveys and research, disseminating information, conducting demonstrations of conservation practices, and carrying out prevention and control measures.

The organization of conservation districts began after State legislatures passed laws based on the 1936 standard. Fifty-two states and territories have adopted conservation district legislation, allowing landowners to create their own districts. Many Native American tribes have also established conservation districts.

Integral to the functioning of the conservation district are three-way mutual agreements between the Secretary of Agriculture, State and territorial governors or their designees, and each conservation district. Through the mutual agreements, USDA works with conservation districts to secure local guidance and gain approval for local delivery of conservation programs on the Nation's private lands. Also, NRCS enters into cooperative working agreements with conservation districts to define cooperation between NRCS and conservation districts in the conservation of natural resources. Trained NRCS conservationists work with individual farmers and ranchers, through conservation districts, to solve their specific conservation problems.

Districts are governed by a board of directors who are owners or occupiers of land within the conservation district, and are locally elected or appointed. Additionally, each board may appoint several nonvoting associate directors. Board members carry out conservation activities within the district and meet regularly to conduct business.

Conservation district employees hired by the district, such as district managers, clerks, conservationists, and technicians, aid in carrying out conservation activities. All conservation district employees are critical members of the local field office conservation team, and work directly and cooperatively with NRCS.

District employees obtain training and engineering job approval authority from NRCS to carry out conservation planning and conservation practice implementation. They generally work under the direct technical guidance of NRCS. Conservation planning and application carried out by conservation district employees must meet NRCS policy, procedures, standards, and specifications and is subject to ongoing quality assurance. This relationship, or team effort, between NRCS and conservation districts dates back more than 60 years to the formation of districts, and constitutes a unique, long-standing, well-accepted, and successful partnership for addressing the conservation needs within the district.

NRCS desires to continue this relationship with conservation districts and to approve conservation district employees to provide technical services through cooperative working agreements between NRCS and conservation districts, provided that the conservation district employees meet the requisite criteria for providing technical services. In order for conservation district employees to be approved to provide technical service provider technical services in partnership with the Department, they must meet the requirements and skill levels established in the cooperative working agreements prior to being covered under the terms of the cooperative working agreements.

The cooperative working agreements will clearly describe the terms and conditions for conservation district employees to provide technical services, including items such as meeting NRCS standards and specifications for technical services and compliance with applicable laws and regulations. When the Department is contributing financial resources through a partnership with a conservation district, such a relationship must be memorialized by a contribution agreement which sets forth all the terms and conditions of the relationship, including scope of work, compliance with standards and applicable laws, etc. Conservation districts must contribute at least 50 percent of the resources needed for implementing the contribution agreement.

While NRCS has a unique relationship with conservation districts, NRCS also has existing relationships with many other natural resource related public agencies and tribal agencies interested in providing technical services in partnership with the Department. Many public agencies have unique training and experience related to the delivery of specific conservation technical services that match the needs for technical services needed to plan and implement conservation systems and practices. To maintain those relationships, and to develop new relationships, NRCS may approve other public agency and tribal agency employees to provide technical services through the use of memoranda of understanding (MOU) between NRCS and those natural resource related agencies interested in partnering with the Department to provide technical services, provided that the public agency employees meet the requisite criteria for providing technical services. In order for public agency employees to be approved to provide technical service provider technical services in partnership with the Department, under the terms of the MOU, they must first meet the requirements and skill levels

established in the MOU. As is the case with conservation districts, when the Department contributes financial resources through a partnership with public and tribal agencies, the Department will enter into a contribution agreement memorializing and setting forth the terms of the relationship. Public agencies must contribute at least 50 percent of the technical resources needed for implementing the contribution agreement.

The MOUs and contribution agreements with public and tribal agencies will reflect the terms and conditions for the public agency employees to provide technical services as technical service providers, including items such as meeting USDA standards and specifications, compliance with applicable laws and regulations and other applicable terms. Public and tribal agencies providing technical service provider assistance are liable for the technical services provided by their employees and must warrant the technical services provided.

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this interim final rule is a significant regulatory action, and has been reviewed by the Office of Management and Budget (OMB). Pursuant to Section 6(a)(3) of Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with the interim final rule for Technical Service Provider Assistance published in the **Federal Register** on November 21, 2002, and included the analysis as part of a Regulatory Impact Analysis document prepared for that interim final rule. The provisions of this interim final rule do not alter the analysis that was originally prepared. A copy of the analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or by e-mail to *gary.gross@usda.gov,* Attention: Technical Service Provider Assistance—Economic Analysis; or at the following web address: *http://www.nrcs.usda.gov.*

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim final rule are not retroactive. The U.S. Department of Agriculture (USDA) has not identified any State or local laws that are in conflict with this regulation, or that would impede full implementation of this rule. In the event that such conflict is identified, the provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Secretary of Agriculture is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

National Environmental Policy Act

The regulations promulgated by this rule do not authorize any action that may affect the human environment. Accordingly, an analysis of impacts under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, has not been performed. This interim final rule will help implement new and existing USDA conservation programs, which are subject to the environmental analyses pursuant to the National Environmental Policy Act.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the promulgation of regulations and the administration of Title II of said Act, which authorizes the use of certified technical service providers, be carried out without regard to Chapter 35 of Title 44 of the United States Code (commonly known as the Paperwork Reduction Act). Accordingly, these regulations, related forms, and other information collection activities needed to establish payment rates under these regulations, are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require government agencies, in general, to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible, and to NRCS in particular. The forms and other information collection activities required for participation in technical services delivery under the technical service provider assistance rule, amended by this rule, are not fully implemented for the public to conduct business with NRCS electronically. However, the required standard forms discussed in this rule will be available electronically through the USDA eForms Web site, at *http://www.sc.egov.usda.gov,* for downloading. The regulation will be available at the NRCS homepage at *http://www.nrcs.usda.gov.*

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to Section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 104–354, USDA classified this interim final rule as not major.

Civil Rights Impact Analysis

A Civil Rights Impact Analysis was completed for the interim final rule for Technical Service Provider Assistance published in the **Federal Register** on November 21, 2002. The provisions of this interim final rule do not alter analysis that was originally prepared. The review revealed no factors indicating any disproportionate adverse civil rights impacts for participants in NRCS programs and services who are minorities, women, or persons with disabilities. A copy of this analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or by e-mail to *gary.gross@usda.gov,* Attention: Technical Service Provider Assistance—Civil Rights Impact Analysis; or at the following web address: *http://www.nrcs.usda.gov.*

List of Subjects in 7 CFR Part 652

Natural Resources Conservation Service, Soil conservation, Technical assistance, Water resources.

■ For the reasons stated in the preamble, the Natural Resources Conservation Service hereby amends Title 7 of the Code of Federal Regulations as set forth below:

■ Accordingly, Title 7 of the Code of Federal Regulations part 652 is amended by adding a new section, 652.8, to subpart A.

PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE

■ 1. The authority citation for part 652 is revised to read as follows:

Authority: 16 U.S.C. 3842, 7 U.S.C. 6962a.

■ 2. Subpart A is amended by adding a new § 652.8 to read as follows:

* * * * *

§ 652.8 Limited Exception to Certification Requirements for State, Local and Tribal Government Partners.

(a) In carrying out its duties to deliver technical services, the Department may enter into agreements, as provided for below, with State, local, and tribal governments (including conservation districts) approving such governmental entities to provide technical services when the Department determines that such a partnership is an effective means to provide technical services.

(b) In the case of conservation districts, the cooperative working agreements between NRCS and the conservation districts will be amended to ensure that district employees have the requisite training or experience in order to provide technical services. For other governmental entities, the Department will enter into memoranda of understanding to ensure that employees of the governmental entity have the requisite training or experience to carry out the technical services. The governmental entity is not required to be certified under the provisions of this regulation in order to provide technical services nor do the other provisions of this regulation apply to any partnership relationship entered into under the authority of this section. The responsibilities of the parties will be governed by the terms of the cooperative working agreement or the memoranda of understanding and the contribution agreement, if any.

(c) Any cooperative working agreement entered into with a conservation district or any memoranda of understanding entered into with a State, local, or tribal government will set forth the specific terms of the Department's approval of such an entity to provide technical services in partnership with the Department, as well as the scope of the relationship. If the Department is providing any financial resources to effectuate such a partnership, the Department will use a contribution agreement to memorialize the relationship, which will include in its terms the requirement that any technical services provided will meet NRCS standards and specifications. Conservation districts and other governmental entities must contribute at least 50 percent of the resources needed for implementing the contribution agreement.

(d) Governmental entities that are technical service providers shall not be eligible to receive payment under a program contract or agreement for technical services provided to a program participant if the governmental entity has entered into a memorandum of understanding or contribution agreement under this section to provide technical services to that program participant.

Signed in Washington, DC, on June 27, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–17260 Filed 7–8–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV03–993–2 IFR]

Dried Prunes Produced in California; Temporary Suspension of the Prune Reserve and the Voluntary Producer Prune Plum Diversion Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends the prune reserve and the voluntary producer prune plum diversion provisions in the California Dried Prune Marketing Order (order) and the administrative rules and regulations related to volume control restrictions for a five-year period. The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (PMC). Suspension of these provisions will ensure that volume control restrictions would not be implemented under these provisions. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or continue unchanged. In the absence of additional rulemaking to modify or terminate these provisions, they would come back into effect automatically at the end of the five-year period.

DATES: Effective August 1, 2003, through July 31, 2008. Comments received by September 8, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the

Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule suspends for five years all provisions in the order and administrative rules and regulations concerning the prune reserve and voluntary producer prune plum diversion. These changes were unanimously recommended by the PMC. This action is needed to ensure that reserve percentages would not be established, and that a prune plum diversion program would not be implemented pursuant to these provisions. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or remain unchanged.

Marketing Order Authority To Suspend

Section 993.90(a) states in part: ''The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he/she finds that such provisions do not tend to effectuate the declared policy of the act.''

Volume Regulation Provisions

Section 993.54 of the order provides authority for volume regulation through establishing salable and reserve percentages of prunes received by handlers (prune reserve). When the prune reserve is in effect, the salable percentage of the California prune crop may be sold to any market while the reserve percentage must be held by the handlers for the account of the PMC. Reserve prunes may be sold to meet either domestic or foreign trade demand or for use in outlets noncompetitive with normal outlets for salable prunes. Net proceeds from sales of reserve prunes are ultimately distributed to producers. The prune reserve is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns.

Voluntary Prune Plum Diversion Program

Section 993.62 of the order authorizes a producer diversion program, which prune producers may use when a prune reserve is implemented. Section 993.162 of the administrative rules and regulations specifies implementing procedures. Under the producer diversion program, any prune producer may divert prune plums of his own production for eligible purposes and receive a diversion certificate from the PMC. The certificate may be submitted to any handler in lieu of reserve prunes and the handler may apply the quantity represented by the certificate towards his reserve obligation. Participation in this program would reduce a producer's expenses to convert prune plums into dried prunes that would ultimately be placed in a relatively low value prune reserve.

Background and Action Taken

The prune reserve was last implemented in 1974 and the producer diversion program was last used in 1971. These programs were controversial in the 1970s and have become increasingly so since then. Some of the independent prune handlers who are also prune producers now oppose any regulatory marketing restrictions because they want to sell all of the prunes they have produced. If additional tonnage is needed, such handlers would buy prunes from other producers to meet their market demand. In addition, if a prune reserve is implemented, it may require these handlers to contract for additional tonnage in order to meet their reserve obligation.

Recently in 2001, when the PMC recommended using supply control techniques, some of the independent handlers and producers opposed the use of these programs. Ultimately, the supply control programs were not implemented at that time. Also, some in the industry do not support the use of these supply control provisions because the industry has successfully reduced crop sizes through other means.

Through industry and USDA funded tree pull programs, the industry has removed over 18,000 acres of prune plum trees; thus reducing the annual prune production by at least 27,000 tons of prunes over the five-year suspension period.

During the five-year suspension period, the industry will have the opportunity to either recommend that these provisions be terminated through rulemaking procedures, or recommend modifications to the provisions to make them more acceptable to all segments of the industry. In the interim, the suspension of these provisions would ensure that these provisions are not implemented. In the absence of any additional action, the provisions will automatically come back into effect at the end of the suspension period.

The PMC unanimously recommended this action at an April 3, 2003, meeting. This interim final rule suspends §§ 993.21d, 993.36(i), 993.54, 993.55, 993.56, 993.57, 993.58, 993.59, 993.62, 993.65 of the order, and §§ 993.156, 993.157, 993.158, 993.159, 993.162, 993.165 and 993.172(e) of the administrative rules and regulations in effect under the order. Portions of §§ 993.33 and 993.41(b) of the order and portions of §§ 993.173(a)(6), 993.173(b)(3), and 993.173(c)(1) of the administrative rules and regulations are also suspended. These sections of the order and administrative rules and regulations pertain to the various requirements of the prune reserve and producer diversion programs.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Industry Profile

There are approximately 1,205 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Eight of the 21 handlers (38 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped less than $5,000,000 worth of dried prunes and

could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

Summary of Rule Change

This rule suspends for five years all provisions in the order and administrative rules and regulations concerning the prune reserve and voluntary producer diversion programs. These supply control programs have been and continue to be controversial in the industry. Furthermore, the industry has successfully reduced crop sizes through other means. Through industry and USDA funded tree pull programs, over 18,000 acres of prune plum trees have been removed, reducing production by at least 27,000 tons over the five-year suspension period.

This action would ensure that the reserve and diversion volume control programs are not implemented for the period of the suspension. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or remain the same. In the absence of further rulemaking, these provisions will automatically come back into effect at the end of the suspension period. Authority to suspend these provisions of the marketing order and administrative rules and regulations is provided in § 993.90(a) of the order.

Impact of Regulation

Regarding the impact of this rule on affected entities, this action could reduce the reporting and recordkeeping burden on California prune handlers and producers and reduce some of the PMC's administrative costs. Although the prune reserve and producer diversion programs have not been implemented since the 1970's and handlers and producers have not been required to file reports pertaining to these programs, suspending these provisions would reduce the potential reporting burden on handlers and producers. Suspension of the provisions eliminates the possibility of requiring handlers and producers to file reports associated with the programs. It would also reduce some of the potential PMC administrative costs of managing these programs. The PMC estimates that 21 California prune handlers would be subject to these provisions and to filing reports pertaining to these programs. Also, if a producer diversion program was implemented, it is estimated that as many as 300 producers would file forms applicable to this program. If handlers filed reports under the prune reserve program, their estimated burden would be 57 hours. If growers filed reports under the diversion program, their estimated burden would be 75.58 hours. Thus, there is a potential for reducing the estimated annual burden of 132.58 hours. The benefits of this interim final rule would apply to all prune handlers and producers, regardless of their size of operation.

The forms applicable to these programs are as follows: (1) Form PMC 4.1, Reserve Prunes Held—Handler; (2) Form PMC 4.2, Prune Reserve Tonnage Sales Agreement; (3) Form PMC 4.5, Certificate of Insurance Coverage; (4) Form PMC 5.1, Notice of Proposed Intent to Store Reserve Prunes; (5) Form PMC 8.44, Request for Replacement of Draft; (6) Form PMC 8.443, Claim for Reserve Pool Proceeds; (7) Form PMC 9.1, Notification of Desire for Deferment of Reserve Withholding; (8) Form PMC 10.1, Application for Prune Plum Diversion; (9) No form number, Proof of Diversion; and (10) No form number, Notification of Report of Diversion.

It should be noted that if the PMC determines this action is having an unfavorable impact on the industry, it could meet and recommend rescinding the suspension. Also, as previously mentioned, the provisions would automatically come back into effect at the end of the suspension period.

Alternatives Considered

The PMC and industry members discussed at the PMC's April 3, 2003, meeting different alternatives to this action. The PMC discussed the possibility of amending the marketing order provisions relating to reserve and producer diversion programs but determined it would prefer to eliminate the prune reserves and producer diversion provisions from the order and administrative rules and regulations in a more timely fashion. During the suspension, the industry will have the opportunity to consider possible order amendments to these volume control provisions. Another alternative would be to terminate the marketing order. Many on the PMC and in the industry deemed termination too drastic an action and preferred to preserve the marketing order and make necessary changes to it to meet current industry needs and to reflect current industry marketing practices.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the applicable forms being suspended by this rule were approved previously by the Office of Management and Budget and assigned OMB No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The PMC's April 3, 2003, meeting where this issue was deliberated was widely publicized throughout the prune industry and all interested persons were invited to attend the meetings and participate in the industry's deliberations. Like all PMC meetings, this meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of these changes on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this rule. All written comments timely received will be considered before a final determination is made on this matter.

After consideration of all relevant material presented, including the PMC's recommendation, and other information, it is found that the provisions being suspended would not tend to effectuate the declared policy of the Act during the August 1, 2003, through July 31, 2008.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be implemented as soon as possible so California dried prune producers and handlers can plan accordingly; (2) this rule relaxes requirements in the order and administrative rules and regulations related to volume control activities; (3) these changes were unanimously recommended at a public meeting and interested parties had an opportunity to provide input; and (4) a 60-day comment period is provided and all

comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In Part 993, §§ 993.21d, 993.54, 993.55, 993.56, 993.57, 993.58, 993.59, 993.62, 993.65, 993.156, 993.157, 993.158, 993.159, 993.162, 993.165, and 993.172(e) are suspended in their entirety.

§ 993.33 [Suspended in part]

■ 3. In the first sentence of § 993.33, the words, ''salable and reserve percentages, and on any matters pertaining to the control or disposition of reserve prunes or to prune plum diversion pursuant to § 993.62,'' are suspended.

■ 4. In § 993.36, paragraph (i) is suspended.

§ 993.41 [Amended]

■ 5. Section 993.41 is amended as follows:

■ a. Suspending paragraph (b)(2) in its entirety.

■ b. Suspending the words ''and reserve'' in paragraph (b)(3).

■ c. Suspending words ''without regard to possible diversions of prune plums by producers'' in paragraph (b)(4).

■ d. Suspending paragraphs (b)(10), (b)(11), and (b)(12) in their entirety.

§ 993.173 [Amended]

■ 6. In § 993.173, paragraph (a)(6) the words ''itemized as to salable and reserve prunes by category'' are suspended and in paragraph (c)(1) the words ''and the tonnage of reserve prunes by size in each category;'' are suspended.

Dated: July 2, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–17276 Filed 7–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE196; Special Conditions No. 23–136–SC]

Special Conditions: CenTex Aerospace, Inc: Raytheon/Beech Model 58, Installation of Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to CenTex Aerospace, Inc.: 7805 Karl May Drive; Waco, Texas 76708 for modifications to the Raytheon/Beech Model 58 airplane. The airplanes, modified by CenTex, will have a novel or unusual design feature(s) associated with the installation of engines that use an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is: June 9, 2003.

Comments must be received on or before August 8, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE196, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE196. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4127, fax: 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE196.'' The postcard will be date stamped and returned to the commenter.

Background

On December 9, 2002, CenTex Aerospace applied for a Supplemental Type Certificate to modify the Raytheon/Beech Model 58. The modified Model 58 Baron will be powered by two reciprocating engines equipped with electronic engine control systems with full authority capability in place of the hydromechanical control systems.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, CenTex Aerospace must show that the modified Model 58 Baron meets the applicable provisions of the original certification basis of the Model 58, as listed on Type Certificate No. 3A16 issued June 18, 1957; exemptions, if any; and the special conditions adopted by this rulemaking action. The model 58 was originally certified under CAR 3, as amended to May 15, 1956, and Paragraphs 23.1385(c), 23.1387(a) and 23.1387(e) of FAR Part 23 as amended by Amendment 23–12. Noise

certification under FAR Part 36, Amendment 36–10 for Model 58 S/N TH–1090 and after with applicable equivalent safety findings: CAR 3.387 for Model 58 and 58A (all serials). For Models 58 and 58A, S/N TH–1 through TH–1471, TH–1476, TH–1487, TH–1489, TH–1498 equipped per Beech Kit Dwg. 58–5012 or Models 58 and 58A, TH–1472 through TH–1475, TH–1477 through TH–1486, TH–1488, TH–1497, TH–1499 and after, equipped per Beech Dwg. 58–000059 or Beech Kit Dwg. 58–5012, compliance with ice protection has been demonstrated with FAR 23.775 of Amendment 23–7; 23.773, 23.929 and 23.1419 of Amendment 23–14; 23.1309 of Amendment 23–17; 23.1325, 23.1327, 23.1351, 23.1357 and 23.1547(e) of Amendment 23–20; 23.1416, 23.1559 and 23.1583(h) of Amendment 23–23 and 25.1323(e) of FAR 25 dated February 1, 1965.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the modified Model 58 Baron because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in 11.19, are issued in accordance with § 11.38, and become part of the certification basis for the supplemental type certification basis in accordance with § 21.17(a)(2). Special conditions are initially applicable to the model for which they are issued. Should the supplemental type certificate be amended in the future to include other models that are listed on the same type data sheet and incorporate the same novel or unusual design features, the special conditions would also apply under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Raytheon/Beech Model 58 Baron, modified by CenTex, Inc., will incorporate the following novel or unusual design features:

The Raytheon/Beech Model 58 Baron airplane modified by CenTex, Inc., will use an engine that includes an electronic control system with full authority digital engine control (FADEC) capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the modified Raytheon/Beech Model 58 Baron will perform critical functions, provisions for protection from the effects of HIRF should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the Aviation Rulemaking Advisory Committee (ARAC) Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a FADEC is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the CenTex modified Raytheon/Beech Model 58 Baron airplane to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–49.

Applicability

As discussed above, these special conditions are applicable to Model 58 Barons modified by CenTex, Inc. Should CenTex Aerospace apply at a later date to amend the supplemental type certificate to incorporate the same novel or unusual design features on another model listed on the same type certificate data sheet as the Model 58 Baron, the special conditions would apply to that model under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model, the Model 58 Baron, of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Raytheon/Beech Model 58 Baron airplanes modified by CenTex, Inc.

1. High Intensity Radiated Fields (HIRF) Protection. In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to

precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peake	Avg.
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz—40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. Electronic Engine Control System. The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on June 9, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17249 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–165–AD; Amendment 39–13225; AD 2003–14–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –200C, –300, –400, and –500 series airplanes. This action requires repetitive inspections for cracking of certain lap splices, and corrective action if necessary. This action is necessary to detect and correct fatigue cracks in the lap joints and consequent rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 14, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2003.

Comments for inclusion in the Rules Docket must be received on or before September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–165–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6452; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA recently received a report of a significant number of cracks along the fuselage skin lap joint on a Boeing Model 737–300 series airplane with 35,710 total flight cycles. During scheduled maintenance, fatigue cracks were found on a lap joint of the skin that extends from aft of the flight deck to the wing front spar just above the passenger windows. Some of the cracks linked up to form a 10-inch crack. The premature cracks were attributed to delaminated skin doublers. Improper processing during phosphoric anodize application of the skin panel is the cause of the delaminated skin doublers. This condition, if not corrected, could result in fatigue cracks in the lap joints and consequent rapid decompression of the airplane.

The improperly processed panels were installed on certain airplanes during manufacturing and were available to the remaining airplanes as spare parts. Therefore, Model 737–200, –200C, –300, –400, and –500 series airplanes may be subject to the identified unsafe condition.

Related Rulemaking Activity

We have issued several ADs to require inspections of lap joints; however, those inspections are not required until various times defined in those ADs, which are substantially longer than the compliance time threshold of this AD such that those compliance times do not provide a sufficient level of safety to address the identified unsafe condition.

In addition, on June 26, 2003, we issued a supplemental notice of proposed rulemaking, Rules Docket No. 98–NM–11–AD (68 FR 39485, July 2, 2003). That proposed AD would apply to certain Boeing Model 737 series

airplanes including those affected by this AD, and would require, among other things, repetitive inspections for cracking of the same bonded skin panels addressed in this AD to detect delamination of the skin doublers (tear straps) from the skin panels. That proposed AD would require accomplishment of the actions specified in Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001. That service bulletin describes procedures for, among other things, a one-time internal inspection for discrepancies (including cracks, corrosion, and delamination of skin doublers) of the lap joints on both sides of the airplane, and repair of any cracking found.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive external detailed inspections for cracks of the fuselage skin at the upper row of fasteners on all the lap joints from body station (BS) 259 to BS 1016. Inspection of the lap joints underneath the wing-to-body fairing is not required by this AD. This AD also provides for optional terminating action for the repetitive inspections. This optional terminating action consists of the one-time internal inspection described in the service bulletin discussed previously.

Difference Between Proposed Rule and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this AD requires operators to repair those conditions per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

We consider this AD interim action. As stated previously, we have issued a related proposed AD that is intended to require, among other things, additional inspections defined in Boeing Service Bulletin 737–53–1179. This new AD provides for those additional inspections as optional terminating action for the repetitive inspections required by this AD. However, the planned compliance time for additional inspections would allow enough time to provide notice and opportunity for prior public comment on the merits of the modification.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–165–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–14–60 Boeing: Amendment 39–13225. Docket 2003–NM–165–AD.

Applicability: Model 737–200, –200C, –300, –400, and –500 series airplanes; certificated in any category; line numbers 292 through 2947 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the lap joints and consequent rapid decompression of the airplane, accomplish the following:

Inspection

(a) At the applicable time specified in paragraph (a)(1) or (a)(2) of this AD: Do an external detailed inspection for cracks of the fuselage skin at the upper row of fasteners on all the lap joints from body station (BS) 259 to BS 1016. Inspection of the lap joints underneath the wing-to-body fairing is not required by this paragraph. Repeat the inspection at intervals not to exceed 500 flight cycles, until the terminating action specified in paragraph (b) of this AD has been accomplished.

(1) For line numbers 611 through 2869 inclusive: Inspect before the accumulation of 20,000 total flight cycles on the airplane, or within 20 days after the effective date of this AD, whichever occurs later.

(2) For line numbers 292 through 610 inclusive and 2870 through 2947 inclusive: Inspect before the accumulation of 20,000 total flight cycles on the airplane, or within 90 days after the effective date of this AD, whichever occurs later.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Terminating Action

(b) For airplanes identified in paragraph (a)(1) of this AD, accomplishment of the one-time internal inspection for discrepancies (including cracks, corrosion, and delamination of the skin doublers) of the skin panels, as shown in Table 2 of Figure 2 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001, terminates the repetitive inspection requirements of paragraph (a) of this AD. (For Zone A, an internal inspection is required. For Zone B, either an internal or external inspection is permissible.)

(c) For airplanes identified in paragraph (a)(2) of this AD, accomplishment of the one-time internal inspection for discrepancies of the skin panels, as shown in Table 3 of Figure 2 of the Accomplishment Instructions Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001, terminates the repetitive inspection requirements of paragraph (a) of this AD. (For Zone A, an internal inspection is required. For Zone B, either an internal or external inspection is permissible.)

Corrective Action

(d) If any crack is found during any inspection required by paragraph (a), (b), or (c) of this AD: Before further flight, repair in accordance with Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001, except as provided by paragraph (e) of this AD.

(e) Where Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001, specifies contacting Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

Incorporation by Reference

(g) Except as otherwise provided in this AD, the actions must be done in accordance with Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on July 14, 2003.

Issued in Renton, Washington, on July 4, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17432 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15074; Airspace Docket No. 03–ACE–42]

Modification of Class E Airspace; Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Cedar Rapids, IA.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 9, 2003 (68 FR 24868). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on June 25, 2003.

Anthony D. Roetzel,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17250 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15075; Airspace Docket No. 03–ACE–43]

Modification of Class E Airspace; Valentine, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Valentine, NE.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA publishes this direct final rule with a request for comments in the **Federal Register** on May 19, 2003 (68 FR 26994). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on June 25, 2003.

Anthony D. Roetzel,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17251 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15076; Airspace Docket No. 03–ACE–44]

Modification of Class E Airspace; Kaiser, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E Airspace at Kaiser, MO.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locus, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 23, 2003 (68 FR 28122) and subsequently published a correction in the **Federal Register** on June 3, 2003 (68 FR 33231). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on June 25, 2003.

Anthony D. Roetzel,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17252 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

17 CFR Part 71

[Docket No. FAA–2003–15453; Airspace Docket No. 03–ACE–51]

Modification of Class E Airspace; Elkhart, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) have been developed to serve Elkhart-Morton County Airport, Elkhart, KS. The Nondirectional Radio Beacon (NDB) Runway (RWY) 35 SIAP serving Elkhart-Morton County Airport has been amended. This action modifies Class E airspace at Elkhart, KS to the appropriate dimensions for protecting aircraft executing the approaches. The Elkhart-Morton County Airport airport reference point has been redefined and is incorporated into the legal description of Elkhart, KS Class E airspace.

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the Rules Docket must be received on or before August 20, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15453/ Airspace Docket No. 03–ACE–51, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the

Class E airspace area at Elkhart, KS. RNAV (GPS) RWY 4, ORIGINAL SIAP, RNAV (GPS) RWY 17, ORIGINAL SIAP, RNAV (GPS) Rwy 22, ORIGINAL SIAP, RNAV (GPS) RWY 35, ORIGINAL SIAP and NDB RWY 35, AMENDMENT 1 SIAP have been developed to serve Elkhart-Morton County Airport, Elkhart, KS. The Elkhart, KS controlled airspace must be tailored to contain aircraft executing the approach procedures. This action modifies Class E airspace extending upward from 700 feet above ground level (AGL) at Elkhart, KS. An examination of controlled airspace for Elkhart, KS revealed discrepancies in the Elkhart-Morton County Airport airport reference point used in the legal description for the Elkhart, KS Class E airspace area. Class E controlled airspace at Elkhart, KS is defined, in part, by the Elkhart-Morton County Airport airport reference point. This action corrects discrepancies between the previous and revised airport reference points by modifying the Elkhart, KS Class E airspace area. It incorporates the revised Elkhart-Morton County Airport airport reference point into the Class E airspace legal description and brings the airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15453/Airspace Docket No. 03–ACE–51.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Elkhart, KS

Elkhart-Morton County Airport, KS
(Lat. 37°00′03″N., long. 101°52′48″W.)
Elkhart NDB
(Lat. 37°00′04″N., long. 101°53′05″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Elkhart-Morton County Airport and within 2.5 miles each side of the 172° bearing from the Elkhart NDB extending from the 6.5-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on June 26, 2003.

Anthony D. Roetzel,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17253 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15363; Airspace Docket No. 03–AEA–3]

RIN 2120–AA66

Revision of Jet Route J–147

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Jet Route 147 (J–147) by realigning the segment of the route that extends from the Beckley,

WV, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the RHODE Intersection. Specifically, the FAA is realigning J–147 from the Beckley, WV, VORTAC to the Greenbrier, WV, VORTAC, then to the RHODE Intersection. The FAA is taking this action because the current radial from the Beckley VORTAC to the RHODE Intersection is unusable for navigation. This change will restore use of J–147 and enhance the management of air traffic in the affected area.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Aircraft navigating on J–147 currently use the 076° radial of the Beckley, WV, VORTAC for the route segment between Beckley VORTAC and the RHODE Intersection. A flight inspection has revealed that the 076° radial has become unusable for navigation. The FAA issued a Notice to Airmen informing aviation users that this segment of J–147 is unusable. The FAA is realigning J–147 in order to by-pass the unusable radial and restore the route to service.

The Rule

This action amends 14 CFR part 71 by revising a segment of J–147 between the Beckley VORTAC and the RHODE Intersection. Due to limitations of the Beckley VORTAC, the radial between Beckley and RHODE Intersection is unusable for navigation. Specifically, this action realigns J–147 from Beckley, WV, VORTAC to Greenbrier, WV, VORTAC, then to RHODE Intersection. This alignment will bypass the unusable Beckley radials and permit restoration of the full length of J–147 for navigation. This action will enhance the management of air traffic in the affected area. A satisfactory flight inspection of the realigned route segment has been completed.

Section 553(b) permits the agency to forego notice and comment rulemaking when the agency finds that such notice would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). In this instance, the full length of J–147 is currently unusable, thus adopting this change by final rule restores J–147 to use in its entirety. This enhances safety and the management of the airspace system. Thus notice and comment in this instance is contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–147 [Revised]

From Beckley, WV; Greenbrier, WV; INT Greenbrier 064° and Casanova, VA, 253° radials; Casanova.

* * * * *

Issued in Washington, DC, on July 2, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–17362 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15492; Airspace Docket No. 03–ANE–102]

RIN 2120–AA66

Minor Revision of the Legal Description of VOR Federal Airway V–167 in the Vicinity of Hyannis, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes a minor amendment to the legal description of Very High Frequency Omnidirectional Range (VOR) Federal Airway V–167. This change is necessary due to a slight realignment of the PEAKE Intersection, which is a fix located on the segment of V–167 that extends between the Providence, RI, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility and the Marconi, MA, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility. The realignment of the PEAKE Intersection requires a one degree change in the Marconi VOR/DME radial that forms the PEAKE Intersection. This amendment enhances system efficiency and safety.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The PEAKE Intersection is a navigation fix located along the segment of V–167 that extends between the Providence VORTAC and the Marconi VOR/DME. PEAKE also serves as the initial approach fix for the instrument landing system (ILS) approach to Runway 24 at the Vineyard Haven Airport, Martha's Vineyard, MA. The PEAKE Intersection has been moved slightly in order to place the fix directly on the straight-in ILS course to the

Vineyard Haven Airport. As a result of this move, the Marconi VOR/DME radial that is used to form the PEAKE Intersection must be shifted by one degree, from 211° to 212°.

The Rule

This action amends Title 14 CFR part 71 (part 71) by making a minor change in the legal description of VOR Federal Airway V–167. The PEAKE Intersection has been moved slightly in order to align the fix with the centerline of the ILS final approach course to Runway 24 at the Vineyard Haven Airport, MA. Due to this move, the Marconi VOR/DME radial that is used to form the PEAKE Intersection must be shifted by one degree, from 211° to 212°. This minor amendment ensures that the PEAKE Intersection remains properly aligned with the affected segment of V–167, and enhances the efficiency and safety of aircraft operations in the area.

Section 553(b) permits an agency for good cause to forego notice and comment rulemaking when such action is impracticable, unnecessary, or contrary to the public interest. Since this action merely involves a minor editorial change in the legal description of one Federal airway, which is necessary for system efficiency and safety, and does not involve a change in the dimensions or operating requirements of that airspace, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E, AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–167 [Revised]

From Hancock, NY; INT Hancock 117° and Kingston, NY, 270° radials; Kingston; INT Kingston 095° and Hartford, CT, 269° radials; Hartford; Providence, RI; INT Providence 101° and Marconi, MA, 212° radials; Marconi; INT Marconi 346° and Kennebunk, ME, 161° radials; to Kennebunk. The airspace outside the United States below 2,000 feet MSL, including the portion within Warning Area W–103, is excluded.

* * * * *

Issued in Washington, DC, on July 2, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–17363 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2002–13849; Airspace Docket No. 02–ASO–24]

RIN 2120–AA66

Revision of VOR Federal Airways in the Vicinity of Tuscaloosa, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the legal descriptions of four Very High Frequency Omnidirectional Range (VOR) Federal airways that include the Tuscaloosa, AL, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility in their route structures. Currently, the Tuscaloosa VORTAC and the Tuscaloosa Municipal Airport share the same name and location identifier. The fact that the VORTAC and the airport are not co-located has led to confusion among users. To eliminate this confusion, the Tuscaloosa VORTAC will be renamed ''Crimson VORTAC,'' and will be assigned a new location identifier ''LDK.'' This rule revises the descriptions of VOR Federal Airways V–18, V–66, V–245, and V–417 to reflect the name change of the VORTAC.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Tuscaloosa VORTAC is located 4.4 nautical miles northeast of the Tuscaloosa Municipal Airport, Tuscaloosa, AL. The airport and the VORTAC currently share the same name and three-letter location identifier (*i.e.*, TCL). The FAA's policy regarding the naming of navigation aids (NAVAID) states that a ''NAVAID with the same name as the associated airport should be located on that airport. When the retention of the airport name at an off-airport NAVAID could lead to a potentially confusing situation, the NAVAID name should be changed.'' There have been instances where the shared name/location identifier at Tuscaloosa has resulted in confusion in pilot/air traffic controller communications. Since the airport and the VORTAC are both located in an area lacking air traffic control radar coverage at low altitudes, confusion over aircraft clearance limits and/or routing could lead to a situation that would compromise aviation safety. To eliminate future confusion and enhance safety, the FAA has determined that the Tuscaloosa VORTAC name and identifier should be changed.

The Rule

This action amends 14 CFR part 71 by revising the legal descriptions of VOR Federal Airways V–18, V–66, V–245,

and V–417, which include the Tuscaloosa, AL, VORTAC as part of their route structures. Currently, the Tuscaloosa VORTAC and the Tuscaloosa Municipal Airport share the same name and location identifier. The fact that the VORTAC and the airport are not co-located has led to confusion among users and presents a potential safety problem. In order to alleviate this problem, the ''Tuscaloosa VORTAC'' is being renamed the ''Crimson VORTAC'' and its location identifier is being changed to ''LDK.'' This rulemaking action is being taken to change all references in the affected VOR Federal airway route descriptions that read ''Tuscaloosa, AL'' to read ''Crimson, AL.'' This action makes an additional minor correction to the legal description for V–66 by adding the State abbreviation ''TX'' following the first use of the word ''Hudspeth.'' This abbreviation was inadvertently omitted in the previous legal description.

Section 553(b) permits an agency for good cause to forego notice and comment rulemaking when such action would be impracticable, unnecessary, or contrary to the public interest. In this instance, the FAA finds that this action is needed to improve safety and eliminate confusion. Thus, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

VOR Federal airways are published in paragraph 6010(a), of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E, AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–18 [Revised]

From Guthrie, TX, via INT Guthrie 156° and Millsap, TX, 274° radials; Millsap; Glen Rose, TX; Cedar Creek, TX; Quitman, TX; Belcher, LA; Monroe, LA; Jackson, MS; Meridian, MS; Crimson, AL; Vulcan, AL; Talladega, AL; Atlanta, GA; Colliers, SC; Charleston, SC.

* * * * *

V–66 [Revised]

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX. From Crimson, AL, Brookwood, AL; LaGrange, GA; INT LaGrange 120° and Columbus, GA, 068° radials; INT Columbus 068° and Athens, GA, 195° radials; Athens; Greenwood, SC; Sandhills, NC; Raleigh-Durham, NC; Franklin, VA, excluding the airspace above 13,000 feet MSL from the INT of Tucson, AZ, 122° and Cochise, AZ, 257° radials to the INT of Douglas, AZ, 064° and Columbus, NM, 277° radials.

* * * * *

V–245 [Revised]

From Alexandria, LA, via Natchez, MS; Jackson, MS; Bigbee, MS; INT Bigbee 082° and Crimson, AL, 304° radials; to Crimson.

* * * * *

V–417 [Revised]

From Monroe, LA, via INT Monroe 105° and Jackson, MS, 256° radials; Jackson; INT Jackson 111° and Meridian, MS, 262° radials; Meridian; Crimson, AL; Vulcan, AL; Rome, GA; INT Rome 060° and Electric City, SC, 274° radials; INT Electric City 274° and Athens, GA, 340° radials; Athens; Colliers, SC; Allendale, SC; to Charleston, SC.

* * * * *

Issued in Washington, DC, on July 2, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–17361 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9071]

RIN 1545–BB78

Effect of Elections in Certain Multi-step Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document gives effect to section 338(h)(10) elections in certain multi-step transactions. These regulations affect corporations and their shareholders. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on or after July 9, 2003.

Applicability Date: For dates of applicability, see § 1.338(h)(10)–1T(h).

FOR FURTHER INFORMATION CONTACT: Daniel Heins, Mary Goode or Reginald Mombrun at (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A. Section 338 Generally

In the case of any qualified stock purchase, section 338 allows a purchasing corporation to elect to treat the target corporation as having sold all of its assets at the close of the acquisition date at fair market value and then treats the target corporation as a new corporation that purchased all of its assets as of the beginning of the day after the acquisition date. Section 338 was enacted to replace former section 334(b)(2) and to repeal the Kimbell-Diamond doctrine. See H.R. Rep. No. 97–760 at 536 (1982), 1982–2 C.B. 600, 632 (reflecting that section 338 replaces ''any nonstatutory treatment of a stock purchase as an asset purchase under the Kimbell-Diamond doctrine''). In *Kimbell-Diamond Milling Co.* v. *Commissioner*, 14 T.C. 74, aff'd per curiam, 342 U.S. 827 (1951), the court held that the purchase of the stock of a target corporation for the purpose of obtaining its assets through a prompt liquidation should be treated by the purchaser as a purchase of the target corporation's assets with the purchaser receiving a cost basis in the assets.

B. Revenue Ruling 2001–46

Rev. Rul. 2001–46 (2001–2 C.B. 321) considers whether the step transaction doctrine should apply to treat certain acquisitions of stock of a target corporation followed by mergers of the target corporation into the acquiring corporation as reorganizations under section 368(a)(1)(A). In Situation 1 of that ruling, Corporation X owns all of the stock of Corporation Y. Pursuant to an integrated plan, X acquires all of the stock of Corporation T in a statutory merger of Y into T (the ''Acquisition Merger''), with T surviving. In the Acquisition Merger, the T shareholders exchange their T stock for consideration, 70 percent of which is X voting stock and 30 percent of which is cash. Following the Acquisition Merger and as part of the plan, T merges into X in a statutory merger (the ''Upstream Merger''). If viewed separately from the Upstream Merger, the Acquisition Merger would qualify as a qualified stock purchase. If viewed separately from the Acquisition Merger, the Upstream Merger would qualify as a liquidation described in section 332. However, if the step transaction doctrine were applied to the Acquisition Merger and the Upstream Merger, the integrated transaction would be treated as an integrated acquisition of T's assets by X in a single statutory merger qualifying as a reorganization under section 368(a).

Considering the appropriate treatment of the Acquisition Merger and the Upstream Merger, Rev. Rul. 2001–46 examines, among other authorities, Rev. Rul. 67–274 (1967–2 C.B. 141) and Rev. Rul. 90–95 (1990–2 C.B. 67). In Rev. Rul. 67–274, a corporation's acquisition of stock of a target corporation that, viewed independently, qualifies as a reorganization under section 368(a)(1)(B), is followed by a liquidation of the target corporation into the acquiring corporation that, viewed independently, qualifies as a liquidation described in section 332. Rev. Rul. 67–274 holds that the transaction is an acquisition by the acquiring corporation of the target corporation's assets in a reorganization under section 368(a)(1)(C). In Rev. Rul. 90–95, a subsidiary of the acquiring corporation merges into the target corporation with the target corporation shareholders receiving solely cash in exchange for their stock. Immediately following this merger, the target corporation merges into the acquiring corporation. Rev. Rul. 90–95 rules that the first step is accorded independent significance from the subsequent liquidation of the target corporation and, therefore, is treated as a qualified stock purchase, regardless of whether an election under section 338 is made.

In Rev. Rul. 2001–46, the IRS concluded that treating the Acquisition Merger and the Upstream Merger as a single statutory merger of T into X would not violate the policy underlying section 338 because that treatment results in a transaction that qualifies as a reorganization under section 368(a)(1)(A) in which X acquires the assets of T with a carryover basis under section 362, not a cost basis under section 1012. Finally, Rev. Rul. 2001–46 states that the IRS and Treasury are considering whether to issue regulations that would reflect the general principles of the revenue ruling, but would allow taxpayers to make an election under section 338(h)(10) with respect to a step in a multi-step transaction that, viewed independently, is a qualified stock purchase and is pursuant to a written agreement that requires, or permits, the purchasing corporation to cause a section 338(h)(10) election in respect of such step to be made. The IRS requested and received comments on this issue.

Explanation of Provisions

The IRS and Treasury have studied the comments received in response to the request made in Rev. Rul. 2001–46, all of which urge the IRS and Treasury to allow taxpayers to make section 338(h)(10) elections in certain transactions as contemplated by Rev. Rul. 2001–46. These final and temporary regulations adopt this recommendation and provide that the step transaction doctrine will not be applied if a taxpayer makes a valid section 338(h)(10) election with respect to a step in a multi-step transaction, even if the transaction would otherwise qualify as a reorganization, if the step, standing alone, is a qualified stock purchase. The IRS and Treasury are continuing to study the other comments received. In particular, the IRS and Treasury are considering whether any amendments to the portion of the regulations under section 338 related to the corporate purchaser requirement are appropriate.

Effective Date

These final and temporary regulations are applicable to acquisitions of stock occurring on or after the date of publication of the regulations.

Special Analyses

These final and temporary regulations are necessary in order to provide taxpayers with immediate guidance regarding the validity of certain elections made under section 338(h)(10). Accordingly, good cause is found for dispensing with the notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with providing a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. These final and temporary regulations have been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal authors of these final and temporary regulations are Daniel Heins and Mary Goode, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 is amended by adding an entry in

numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.338(h)(10)–1T also issued under 26 U.S.C. 337(d), 338 and 1502. * * *

■ 2. Section 1.338–3 is amended by adding a sentence at the end of paragraph (c)(1)(i) to read as follows:

§ 1.338–3 Qualification for the section 338 election.

* * * * *

(c) * * *

(1) * * *

(i) * * * See § 1.338(h)(10)–1T(c)(2) for special rules concerning section 338(h)(10) elections in certain multi-step transactions.

■ 3. Section 1.338(h)(10)–1 is amended as follows:

■ 1. Paragraphs (c)(2), (c)(3) and (c)(4) are redesignated as paragraphs (c)(3), (c)(4) and (c)(5) respectively.

■ 2. A newly designated paragraph (c)(2) is added.

The revisions and addition read as follows:

§ 1.338(h)(10)–1 Deemed asset sale and liquidation.

* * * * *

(c) * * *

(2) [Reserved] For further guidance see § 1.338(h)(10)–1T(c)(2).

* * * * *

■ 4. Section 1.338(h)(10)–1T is added to read as follows:

§ 1.338(h)(10)–1T Deemed asset sale and liquidation (temporary).

(a) through (c)(1) [Reserved]. For further guidance, see § 1.338(h)(10)–1(a) through (c)(1).

(c)(2) *Availability of section 338(h)(10) election in certain multi-step transactions.* Notwithstanding anything to the contrary in § 1.338–3(c)(1)(i), a section 338(h)(10) election may be made for T where P's acquisition of T stock, viewed independently, constitutes a qualified stock purchase and, after the stock acquisition, T merges or liquidates into P (or another member of the affiliated group that includes P), whether or not, under relevant provisions of law, including the step transaction doctrine, the acquisition of the T stock and the merger or liquidation of T qualify as a reorganization described in section 368(a). If a section 338(h)(10) election is made in a case where the acquisition of T stock followed by a merger or liquidation of T into P qualifies as a reorganization described in section 368(a), for all Federal tax purposes, P's acquisition of T stock is treated as a qualified stock purchase and is not treated as part of a reorganization described in section 368(a).

(c)(3) through (e) (*Example 10*) [Reserved]. For further guidance, see § 1.338(h)(10)–1(c)(3) through (e) (*Example 10*).

(e) *Example 11. Stock acquisition followed by upstream merger—without section 338(h)(10) election.* (i) P owns all the stock of Y, a newly formed subsidiary. S owns all the stock of T. Each of P, S, T and Y is a domestic corporation. P acquires all of the T stock in a statutory merger of Y into T, with T surviving. In the merger, S receives consideration consisting of 50% P voting stock and 50% cash. Viewed independently of any other step, P's acquisition of T stock constitutes a qualified stock purchase. As part of the plan that includes P's acquisition of the T stock, T subsequently merges into P. Viewed independently of any other step, T's merger into P qualifies as a liquidation described in section 332. Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into P as an acquisition by P of T's assets in a reorganization described in section 368(a). P and S do not make a section 338(h)(10) election with respect to P's purchase of the T stock.

(ii) Because P and S do not make an election under section 338(h)(10) for T, P's acquisition of the T stock and T's merger into P is treated as part of a reorganization described in section 368(a).

Example 12. Stock acquisition followed by upstream merger—with section 338(h)(10) election. (i) The facts are the same as in *Example 11* except that P and S make a joint election under section 338(h)(10) for T.

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of the T stock is treated as a qualified stock purchase and P's acquisition of the T stock is not treated as part of a reorganization described in section 368(a).

Example 13. Stock acquisition followed by brother-sister merger—with section 338(h)(10) election. (i) The facts are the same as in *Example 12,* except that, following P's acquisition of the T stock, T merges into X, a domestic corporation that is a wholly owned subsidiary of P. Viewed independently of any other step, T's merger into X qualifies as a reorganization described in section 368(a). Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into X as an acquisition by X of T's assets in a reorganization described in section 368(a).

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of T stock is treated as a qualified stock purchase and P's acquisition of T stock is not treated as part of a reorganization described in section 368(a).

Example 14. Stock acquisition that does not qualify as a qualified stock purchase followed by upstream merger. (i) The facts are the same as in *Example 11*, except that, in the statutory merger of Y into T, S receives only P voting stock.

(ii) Pursuant to section 1.338–3(c)(1)(i) and paragraph (c)(2) of this section, no election under section 338(h)(10) can be made with respect to P's acquisition of the T stock because, pursuant to relevant provisions of law, including the step transaction doctrine, that acquisition followed by T's merger into P is treated as a reorganization under section 368(a)(1)(A), and that acquisition, viewed independently of T's merger into P, does not constitute a qualified stock purchase under section 338(d)(3). Accordingly, P's acquisition of the T stock and T's merger into P is treated as a reorganization under section 368(a).

(f) through (g) [Reserved]. For further guidance, see § 1.338(h)(10)–1(f) through (g).

(h) *Effective date.* This section is applicable to stock acquisitions occurring on or after July 9, 2003.

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: June 27, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–17225 Filed 7–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9070]

RIN 1545–BB22

Authority To Charge Fees for Furnishing Copies of Exempt Organizations' Material Open to Public Inspection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations amend the existing regulations regarding fees for copies of exempt organizations' material the IRS must make available to the public under section 6104 of the Internal Revenue Code (Code), to provide that copying fees shall be no more than under the fee schedule promulgated pursuant to the Freedom of Information Act (FOIA) by the Commissioner of Internal Revenue (Commissioner) (the ''IRS'' FOIA fee schedule''). The existing regulations authorize the IRS to charge fees for such copies, but do not stipulate the amount of the fees. These temporary regulations also make a conforming amendment to

the existing regulation concerning the fees that an exempt organization may charge for furnishing copies of such material when required to do so, to provide that these fees shall be no more than the per-page copying fee—without regard to any otherwise applicable fee exclusion for the first 100 pages—under the IRS' FOIA fee schedule. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations are effective July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Sarah Tate, 202–622–4590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The IRS' obligation under section 6104 of the Code to make certain information open to public inspection is satisfied by making the information available to the public at such times and places as the IRS shall reasonably prescribe. The existing regulations provide that copies of the information that the IRS must make open to public inspection shall be available to members of the public upon written request. Currently, § 301.6104(a)–6(d) provides that the IRS will charge a ''fee'' for copies of material available to the public under section 6104(a)(1) of the Code, including approved applications for recognition of tax-exempt status and supporting papers. Currently, § 301.6104(b)–1(d)(4) provides that the Commissioner may prescribe a ''reasonable fee'' for copies of material available to the public under section 6104(b) of the Code, including certain information furnished on exempt organization annual information returns.

These temporary regulations amend the existing regulations to clarify that any fee assessed by the IRS in the exercise of its discretion, whether in the case of requests for photocopies, or for special media (*e.g.*, computer printouts, transcripts, CD–ROM reproductions), shall be no more than the fee under the IRS' FOIA fee schedule. For paper copies, the IRS' FOIA fee schedule, at 26 CFR 601.702(f)(3)(iv), grants the first 100 pages free of charge to requesters other than commercial use requesters, but otherwise sets a per-page copying fee applicable to all requesters. The IRS' FOIA fee schedule, at 26 CFR 601.702(f)(5)(iii)(B), also authorizes fees based on the actual costs of non-paper products, such as computer disks.

Currently, § 301.6104(d)–1(d)(3)(i) provides that an exempt organization required to furnish copies to a requester may charge a copying fee corresponding to that which the IRS may charge. These temporary regulations amend existing regulation § 301.6104(d)–1(d)(3)(i) to make clear that an exempt organization may charge the applicable per-page copying fee—for any number of pages—under the IRS' FOIA fee schedule. An exempt organization need not provide the first 100 pages of copies free of charge to requesters other than commercial use requesters as the IRS does.

Through December 18, 2002, the IRS' FOIA fee schedule set fees of $1.00 for the first page and $.15 for each subsequent page of exempt organization returns and related documents. 26 CFR 601.702(f)(5)(iv)(B). Effective December 19, 2002, the fees are to be established by the Commissioner from time to time. 26 CFR 601.702(f) as updated at 67 FR 69673, 69682. Currently, the Commissioner has established fees of $.20 per page, up to 8 ½ by 14 inches, made by photocopy or similar process, and actual cost for other types of duplication. 31 CFR 1.7(g)(1)(i), (ii) and (iii).

Explanation of Provisions

These temporary regulations amend § 301.6104(a)–6(d) and § 301.6104(b)–1(d)(4) to provide that the fees the IRS charges for furnishing copies of materials available to the public under § 301.6104(a)–6(d) and § 301.6104(b)–1(d)(4) shall be no more than under the IRS' FOIA fee schedule.

These temporary regulations also amend § 301.6104(d)–1(d)(3)(i) to make clear that an exempt organization may charge the applicable per-page copying fee under the IRS' FOIA fee schedule—without regard to any otherwise applicable fee exclusion for the first 100 pages.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these temporary regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these temporary regulations is Sarah Tate, Office of Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6104(a)–6(d) is also issued under 5 U.S.C. 552.

Section 301.6104(b)–1(d)(4) is also issued under 5 U.S.C. 552.

Section 301.6104(d)–1(d)(3)(i) is also issued under 5 U.S.C. 552. * * *

■ 2. In § 301.6104(a)–6(d), the fourth sentence is revised to read as follows:

§ 301.6104(a)–6 Procedural rules for inspection.

* * * * *

(d) * * * Any fees the Internal Revenue Service may charge for furnishing copies under this section shall be no more than under the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. 552, by the Commissioner from time to time. * * *

■ 3. In § 301.6104(b)–1(d)(4), the last sentence is revised to read as follows:

§ 301.6104(b)–1 Publicity of information on certain information returns.

* * * * *

(d) * * * Any fees the Internal Revenue Service may charge for furnishing copies under this section shall be no more than under the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. 552, by the Commissioner from time to time.

■ 4. In § 301.6104(d)–1(d)(3)(i), the second sentence is revised to read as follows:

§ 301.6104(d)–1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.

* * * * *

(d) * * * A fee is reasonable only if it is no more than the total of the applicable per-page copying charge prescribed by the fee schedule

promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. 552, by the Commissioner from time to time, and the actual postage costs incurred by the organization to send the copies. The applicable per-page copying charge shall be determined without regard to any applicable fee exclusion provided in the fee schedule for an initial or *de minimis* number of pages (*e.g.* the first 100 pages). * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 1, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–17224 Filed 7–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–02–003]

Safety Zone; Captain of the Port Milwaukee Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Milwaukee Zone during July 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Milwaukee Zone.

DATES: 33 CFR 165.909 is effective from 12:01 a.m. (CST) on July 1, 2003 through 11:59 p.m. (CST) on July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Dave McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

The Coast Guard is implementing the permanent safety zones in 33 CFR 165.909 (published July 3, 2002, in the **Federal Register**, 67 FR 44588), for fireworks displays in the Captain of the Port Milwaukee Zone during July 2003. The following safety zones are in effect for fireworks displays occurring in the month of July 2003:

U.S. Bank (Firstar) Fireworks. This safety zone will be enforced on July 3, 2003 from 9:20 p.m. until 10:10 p.m. In the event of inclement weather, the rain date will be during these same times on July 4, 2003.

Festa Italiana Fireworks. This safety zone will be enforced on July 17th through the 20th, 2003 from 10 p.m. until 10:30 p.m.

Dated: June 30, 2003.

Virginia J. Kammer,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Milwaukee.

[FR Doc. 03–17369 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP SAN JUAN–03–104]

RIN 1625–AA00

Safety Zone: Swimming Across San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone for the Swimming Across San Juan Harbor event in San Juan Harbor, San Juan, Puerto Rico. This safety zone is necessary to protect swimmers and provide for the safety of life on navigable waters by excluding vessels from transiting in the swimming area.

DATES: This rule is effective from Sunday 9 a.m. on July 20, 2003 through 12 p.m. (noon) on Sunday July 20, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP San Juan–03–104] and are available for inspection or copying at Marine Safety Office San Juan, #5 La Puntilla Final, Old San Juan, PR 00901–1800 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes, Greater Antilles Section at (787) 729–5381.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since immediate action is needed to protect the public and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This rule is required to provide for the safety of life on navigable waters because numerous swimmers will be crossing navigable channels in the commercial port of San Juan. This rule creates a safety zone area that will prohibit non-participating vessels from entering the safety zone during the event without the authorization of the Captain of the Port of San Juan, Puerto Rico. The safety zone area is based on a rectangular shape starting at point 1, La Puntilla Final, Coast Guard Base at position 18°27′33″ N 066°07′00″ W, then South to point 2, Catano Ferry Pier at position 18°26′36″ N 066°07′00″ W, then East to point 3, Punta Catano at position 18°26′40″ N 066°06′48″ W, then North to point 4 at position 18°27′40″ N 066°06′49″ W and back to origin.

Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 or telephone number (787) 729–2041. The United States Coast Guard Communications Center will notify the public via Broadcast Notice to Mariners VHF Marine Band Radio, Channel 22 when the zone is activated.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security. The Coast Guard expects the economic impact of this safety zone to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Homeland Security is unnecessary because entry into the safety zone is prohibited for a limited time and vessels will still be able to transit around the safety zone and may be allowed to enter the safety zone with the express permission of the Captain of the Port of San Juan or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard

considered whether this rule would have a significant economic effect upon a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the safety zone will only be in effect for a limited time and vessels will be able to transit around the zone and may be allowed to enter the safety zone with the express permission of the Captain of the Port of San Juan, Puerto Rico or his designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a ''significant energy action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs as a significant energy action has not designated it. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting, and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority. 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T07–104 is added to read as follows:

§ 165.T07–104 Safety Zone; Swimming Across San Juan Harbor, San Juan, Puerto Rico.

(a) *Location.* The safety zone area is based on a rectangular shape starting at point 1, La Puntilla Final, Coast Guard Base at position 18°27′33″ N 066°07′00″ W, then South to point 2, Catano Ferry Pier at position 18°26′36″ N 066°07′00″ W, then East to point 3. Punta Catano at position 18°26′40″ N 066°06′48″ W, then North to point 4 at position 18°27′40″ N 066°06′49″ W and back to origin. All coordinates referenced use Datum: NAD 83.

(b) *Regulations.* All vessels, with the exception of event participant vessels, are prohibited from entering the safety zone without the express permission of the Captain of the Port of San Juan, Puerto Rico or his designated representative. After the termination of the Swimming Across San Juan Harbor, San Juan, Puerto Rico, all vessels may resume normal operations.

(c) *Effective dates.* This section is effective from 9 a.m. on Sunday, July 20, 2003 through 12 p.m. (noon) on Sunday, July 20, 2003.

Dated: June 29, 2003.

William J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03–17372 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–004]

RIN 1625–AA00

Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is revising the enforcement period of the temporary safety zone in the navigable waters of the Mission Creek Waterway in China Basin surrounding the construction site of the Fourth Street Bridge, San Francisco, California. This temporary safety zone is necessary to protect persons and vessels from hazards associated with bridge construction activities. The safety zone will temporarily prohibit usage of the Mission Creek Waterway surrounding the Fourth Street Bridge; specifically, no persons or vessels will be permitted to come within 100 yards of either side of the bridge or pass beneath the bridge during construction, unless authorized by the Captain of the Port, or his designated representative.

DATES: This amendment to § 165.T11–079 is effective from June 27, 2003 to 1 a.m. (PDT) on September 1, 2004. Section 165T11–079, as amended, expires September 1, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket [COTP San Francisco Bay 03–004] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diana J. Cranston, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 13, 2003, we published a temporary final rule (TFR) entitled Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California in the **Federal Register** (68 FR 25503), which was preceded by a notice of proposed rulemaking (NPRM), which was published in the **Federal Register** (68 FR 13244) on March 19, 2003 which afforded the public a comment period. This rule has been in effect since 1 a.m. (PDT) May 1, 2003 and will expire at 1 a.m. (PDT) September 1, 2004. The enforcement period for the safety zone for the first phase of this project was published as commencing on May 1, 2003, and lasting for 2 months, to expire at 1 a.m. June 28, 2003. Due to project delays, the safety zone for the first phase of this project will now last for a 3-month period, vice a 2-month period, expiring on July 28, 2003. The second phase of this project remains as previously published, commencing April 1, 2004, lasting for a 5-month period. Both periods will be enforced 24 hours a day.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The construction delays to this project were unforeseeable and not realized until the final 30-day phase of this 2-month project, thus not allowing enough time for this rule to be published a full 30 days prior to making this rule effective. Accordingly, since timely rehabilitation to the bridge (which is discussed in the Background and Purpose section) is crucial to the safety of this bridge, the channel closure must be extended for another 4-week period, starting June 29, 2003, which is less than 30 days after the publication of this rule.

Background and Purpose

The San Francisco Department of Public Works requested a waterway closure on Mission Creek for the purpose of performing significant work to the Fourth Street Bridge. The Fourth Street Bridge was erected across the Mission Creek Waterway at the China Basin in 1917, and was determined eligible for listing in the National Register of Historic Places in 1985 as part of the California Department of Transportation (Caltrans) Historic Bridge Inventory. Caltrans, Division of Structures, evaluated the Fourth Street Bridge and recommended that the bridge be brought up to current seismic safety standards. In view of extensive corrosion to the steel components and concrete approaches of the bridge, Caltrans has also placed traffic load limitations over this bridge. Three primary objectives are to be met in rehabilitating the Fourth Street Bridge: (i) Seismically retrofit the structure while not significantly altering the historical appearance of the bridge; (ii) Repair the damage to the concrete approaches and several steel and concrete members of the movable span, and (iii) Reinitiate light rail service across the bridge.

The first phase of this project, which began May 1, 2003, will entail the removal of the lift span and will now take approximately 3 months to complete vice the previously published 2 months. During this period, the channel will be closed at the Fourth Street Bridge to boating traffic. The second phase of this project will entail the construction of the north and south approaches, the new counterweight and its enclosing pit; but for the most part, boating traffic will not be affected during this phase. The last phase of this project will entail the replacement of the lift span and aligning the bridge to accept the light rail track system, which will take approximately five months, scheduled to begin April 1, 2004. During this period, the channel will be closed at the Fourth Street Bridge to boating traffic.

The Fourth Street Bridge Project is funded by Federal Highway Administration and State of California. The state funding restricts the construction to a start date before August 2003 and completion by September 2005. Any delays or deferrals in construction will impact the secured funding for the project.

There are two major environmental issues that restrict the construction in the channel, namely the annual pacific hearing-spawning season that runs from December 1 to March 31 and noise constraint in the water for steelhead from December 1 to June 1. Any demolition, pile driving and excavation in the water during those time periods will be monitored and restricted for possible impact on the fish.

The Fourth Street Bridge Project is part of the larger Third Street Light Rail Project and many public presentations on the project's components, channel closure schedules, impacts to surrounding uses and project duration have been made by the City and Port of San Francisco. The Third Street Light Rail Advisory Group was created as a forum to keep the public informed on the progress being made on the Third Street Light rail project. Also, this project has been presented at several Mission Bay Citizen Advisory Committee meetings. At these meetings, the public was notified of the project components, impacts and the need to temporarily close the waterway. Specific to the Fourth Street Bridge project, an Environmental Assessment, required by the Federal Highway Administration and Caltrans, (under the National Environmental Protection Act) was conducted by the City of San Francisco. A public hearing regarding the Environmental Assessment was held on January 17, 2002 at San Francisco

Arts College, Timken Lecture Hall, 1111 8th Street in San Francisco, California, and was well attended.

In January 2003, the City of San Francisco advised the Coast Guard Captain of the Port that two channel closures would be necessary in order to accomplish the Fourth Street Bridge project. The Coast Guard met with various City and Port officials to ensure that there would be minimal impacts on involved and potentially involved entities. Those entities that will be affected by this one-month extension have been notified and concur with this enforcement period extension.

This temporary safety zone in the navigable waters of Mission Creek surrounding the construction site of the Fourth Street Bridge will be enforced during the course of a 3-month period, which started on May 1, 2003 and again for a 5-month period, starting April 1, 2004. Both periods will be enforced 24 hours a day.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this safety zone does restrict boating traffic past the fourth street bridge, the effect of this regulation will not be significant as this waterway is very small with limited boating traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

This safety zone will not have a significant impact on a substantial number of small entities for the following reasons. Although the channel closure will restrict water access to a small number of boats, including houseboats who have moorings in Mission Creek Harbor, the channel closure will not impact land access to these houseboats during the bridge closures. The City of San Francisco, Department of Public Works and the Port of San Francisco have been in close consultation with the Mission Creek Harbor Association to assist boat owners affected by this project. As a result, the Mission Creek Harbor Association has a lease agreement with the Port of San Francisco for both houseboats and pleasure boats to moor outside of the affected closure area for the duration of the first channel closure that commences on May 1, 2003. Payment of all leases has been extended for one month, to coincide with the new expiration date of July 28, 2003. A similar resolution has been met for the second closure that is scheduled to commence on April 1, 2004.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.T11–079, revise paragraph (b)(2) to read as follows:

§ 165.T11–079 Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California.

* * * * *

(b) * * *

(2) The zone in paragraph (a) of this section will be enforced from 1 a.m. (PDT) on May 1, 2003, to 1 a.m. (PDT) on July 28, 2003, and from 1 a.m. (PST) on April 1, 2004 to 1 a.m. (PDT) on September 1, 2004.

* * * * *

Dated: June 27, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–17370 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Changes to the Domestic Mail Manual to Implement Customized MarketMail™

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the *Domestic Mail Manual* (DMM) standards that the Postal Service adopted to implement the Customized MarketMail™ classification changes, as established by the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Approving Stipulation and Agreement on Customized Market Mail Minor Classification Changes, Docket No. MC2003–1. In their decision, the Governors approved the Commission's recommendations, adopting recommended classification changes.

Customized MarketMail (CMM) represents a significant innovation for Standard Mail advertisers who want to target a specific audience with highly individualized mailpiece designs, including nonrectangular-shaped and multidimensional mailpieces such as cutouts of houses, automobiles, power boats, or wearing apparel. More creative designs could encourage greater customer interest and response rates to promotions, advertising, fund-raising campaigns, or other types of communications.

Before this service was introduced, mailing standards required that any mailpiece that was ¼ inch thick or less could not be mailed if that piece was not rectangular. This exclusion of nonrectangular letter-size mail and, in some cases, nonrectangular flat-size mail, reduced the available options for businesses and organizations wishing to reach existing or potential customers through advertising messages and designs, including the shape of the mailpiece. CMM will overcome this previous restraint.

EFFECTIVE DATE: This final rule takes effect at 12:01 a.m. on Sunday, August 10, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Berger, 703–292–3645, Mailing Standards, Postal Service Headquarters; or Garry A. Rodriguez, 212–613–8748, New York Rates and Classification Service Center.

SUPPLEMENTARY INFORMATION:

On March 14, 2003, the United States Postal Service, in conformance with section 3623 of the Postal Reorganization Act (39 U.S.C. 101 *et seq.*), filed a request for a recommended decision by the Postal Rate Commission (PRC) on the establishment of Customized MarketMail as a minor classification change. The PRC designated this filing as Docket No. MC2003–1.

On June 6, 2003, pursuant to 39 U.S.C. 3624, the PRC issued to the Governors of the Postal Service its Opinion and Recommended Decision Approving Stipulation and Agreement on Customized Market Mail Minor Classification Changes, Docket No. MC2003–1. The PRC recommended that the Postal Service proposal for Customized MarketMail be established as a permanent classification.

On June 27, 2003, the Governors of the Postal Service approved the recommended decision and the Board of Governors established an implementation date of August 10, 2003, on which the approved classifications for Customized MarketMail take effect. This final rule contains the DMM standards adopted by the Postal Service to implement the decision of the Governors.

The Postal Service has therefore determined to issue these standards as published in the proposed rule, with minor modifications, as issued on May 21, 2003, in the **Federal Register** (68 FR 27760–27767). In that proposed rule, the Postal Service requested comments from the public and the mailing industry.

In order to simplify further the requirements for CMM, the Postal Service has initiated the following modifications or clarifications to the proposed rule:

- Addition of Postal Service flat trays as a container option.
- Addition of three distinct content identifier numbers for CMM prepared in Postal Service containers (letter trays, flat trays, and sacks), including the required ''MAN'' to ensure the mail is manually handled.
- Addition of a mailing standard requiring the submission of a sample CMM piece along with an extra copy of the completed postage statement corresponding to the CMM mailing at the time of mailing.

Comments

The Postal Service received comments from four distinct entities: a mailing association, a printing and graphics

company, a promotional products company, and a Postal Service employee.

One of the commenters expressed a general objection to CMM. This comment is outside the scope of the final rule.

Three of the commenters praised the Postal Service for its proposed changes to mailing standards that currently prohibit nonrectangular pieces that are ¼ inch thick or less. They stated that this minor classification change will provide new and more creative opportunities for advertising mailers to reach their customers and, at the same time, strengthen the viability of mail as an advertising medium.

These same three commenters expressed their concern about potential cost barriers for some mailers wishing to use this new service. In particular, these commenters stated that, because of the necessary requirement to enter mail at the delivery unit under a limited set of methods, many mailers would not be able to afford the production costs, postage costs, and then the transportation costs in order to consider CMM a viable choice for either ongoing business needs or occasional marketing campaigns.

The same three commenters believed that adding both Parcel Post drop shipment and First-Class Mail drop shipment (open and distribute at destination office) would provide two more effective and, in many cases, more economical means to enter CMM pieces at the required delivery unit. Parcel Post would provide lower costs than either Priority Mail or Express Mail drop shipment, and First-Class Mail drop shipment would allow sending either one piece or a handful of pieces to a particular delivery unit.

The Postal Service contemplated that this minor classification change would complement existing rates and services and only existing Postal Service infrastructures for mail processing, transportation, and delivery would be used for this high-end service. By using the current transportation networks and mail processing and delivery systems already in place, the Postal Service would be able to introduce this product efficiently. In addition, the Postal Service established simpler and less stringent preparation standards than those required for other types of Standard Mail, including the elimination of the minimum required number of pieces per package and container.

Mindful of the need to make this new service competitive, the Postal Service will offer four practical methods to reach the delivery unit:

- *Normal entry procedures for mailers who already have paid the appropriate fees (including the annual mailing fee) at the Post Office of mailing.* If the Post Office of mailing is also the site from which carriers deliver the destinating mail or the site in which distribution is made to Post Office boxes, the mail can be verified and accepted at that office like any other mailing. This method is especially useful for local mailers taking CMM to small Post Offices. If the Post Office has multiple stations and branches, the mailer could handle the mail similarly to a plant-verified drop shipment (PVDS) as long as the applicable documents are used. In either case, this entry method is useful and inexpensive for local mailers either preparing the mail themselves or working with a third-party mail preparation house. It eliminates the need for using Express Mail or Priority drop shipment altogether and adds only the transportation costs to the total mailing expenditures.
- *Plant-verified drop shipment for either local mailers or national mailers (or mailers working with a third party).* Here the mail is verified at origin either in the mailer's plant or at the business mail entry unit (BMEU) at the origin post office serving the mailer's plant. Postage and fees are paid under a valid permit at the post office generally serving the mailer's plant. The shipments are then shipped on the mailer's or agent's transportation to the various destination Postal Service facilities, where the shipments are compared with the proper drop shipment form and then accepted as mail by the Postal Service. For small mailings, a mailer can certainly engage the services of an agent who makes regular drops either locally or nationally, saving considerable costs associated with this method.
- *Priority Mail drop shipment for budget-conscious mailers needing an efficient and effective entry method that generally provides two- to three-day service.* Mailers can prepare the pieces either directly into Priority Mail sacks or use Postal Service letter trays that are properly labeled. Moreover, mailers can obtain special Priority Mail mailing boxes, envelopes, tape, and labels from the Postal Service at no additional charge. Mailers may also use their own mailing cartons and envelopes for this drop shipment method.
- *Express Mail drop shipment for mailers needing a fast entry method that generally provides overnight service with tracking and tracing.* This entry method, though more expensive than Priority Mail, also provides a postage refund for the Express Mail portion if the drop shipment fails to be delivered by the guaranteed delivery time. Moreover, mailers can obtain special Express Mail mailing boxes, envelopes, tape, and labels from the Postal Service at no additional charge. Mailers may also use their own mailing cartons and envelopes for this drop shipment method.

First-Class Mail as a drop shipment method may not have widespread use owing to the 13-ounce maximum weight limit imposed on that class of mail. For example, if a mailer prepared 3-ounce CMM pieces, that mailer could place no more than four such pieces in one First-Class Mail envelope. Postal Service drop shipment services—both Express Mail and Priority Mail—were originally designed to carry large quantities of lower rate mail such as Standard Mail letter or small parcels.

In regard to the pricing between Priority Mail drop shipment and any proposal to use a Parcel Post drop shipment alternative, see the following table. Taking an average of zone 4 for lighter weight categories, the differences between the two subclasses of mail are not always significant. Mailers wanting to use Parcel Post would likely select the inter-bulk mail center (BMC) machinable rates rather than the less expensive intra-BMC rates for pieces entering and destinating in the service area of the same BMC. The lower intra-BMC rates would be more likely only for localized mailings. Furthermore, when the postage cost for the Priority Mail portion is divided by the actual number of enclosed pieces and thus spread out over each piece, the price differences can be as small as a few extra cents per piece.

RATE COMPARISON: PRIORITY MAIL AND PARCEL POST (ZONE 4)

Weight not over (pounds) (zone 4)	Priority mail	Parcel post Intra-BMC (machinable)	Parcel post Inter-BMC (machinable)
1	$3.85	$3.05	$3.75
2	4.55	3.63	4.14
3	6.05	4.20	5.55
4	7.05	4.72	6.29
5	8.00	5.15	6.94
6	8.85	5.51	7.44
7	9.80	5.84	7.91
8	10.75	6.14	8.30
9	11.70	6.45	8.74
10	12.60	6.74	9.10
15	16.20	7.96	10.73
20	19.75	8.91	11.98

Although at this time the Postal Service does not plan to introduce new services such as Parcel Post drop shipment or First-Class Mail drop shipment, it will study these ideas and determine their merits and their impact on mailer costs, other classes of mail, mail processing changes, software modifications for customers preparing manifested mail and other possible costs resulting from any such addition to current services.

Data Collection

One commenter also urged the Postal Service to pursue relaxing or modifying some of the mail preparation standards in the proposed rule as one way of improving the affordability of CMM for mailers wanting to use this new service. Specifically, the mailing association believed that the Postal Service should develop and implement the necessary procedures to identify and track CMM by revenue, volume, and cost. Collecting such data would help in reviewing the various costing components of CMM and possibly inform future proposals for rate changes that would make CMM more economical for a wider range of mailers.

The Postal Service believes that the only stringent mail preparation standards for some mailers might be those requiring destination delivery unit entry. Otherwise, CMM is probably easier to prepare than any other presorted mail at any other rate. Except for the required minimum of 200 pieces for each mailing, CMM does not require that minimum volumes be sent to a single destination delivery unit. In addition, there are no minimums for the number of pieces prepared in packages or placed into containers. Moreover, mailers may use letter trays, flat trays, or sacks, as well as mailer-supplied containers.

As part of the Stipulation and Agreement, the Postal Service will undertake a data collection and reporting plan. Specifically, the Postal Service will amend the appropriate postage statements to require separate identification of CMM. Data from the postage statements would then be collected and analyzed to estimate both the annual volume and revenue of CMM. Under the terms of the Stipulation and Agreement, the Postal Service would report estimates of CMM volume and revenue annually to the Postal Rate Commission. Data reporting would continue until the conclusion of the next omnibus rate proceeding. As a result of the settlement, participants interested in revisiting the impact of CMM would be equipped with statistics that would aid in framing an analysis of CMM in a future rate case.

Counterstacking

One commenter contended that counterstacking nonuniform CMM pieces could pose additional problems and work for the mailer and the Postal Service. The commenter did not believe counterstacking was necessary because CMM mailers are obligated to deliver the mail to the delivery unit using their own transportation. The commenter also noted that counterstacking requires the mailer to reorient the pieces based on their unevenness, which is generally a manual process. The Postal Service employee receiving the counterstacked packages is then required to turn the pieces around for efficient reading and casing. This commenter also questioned how a mailer would counterstack pieces that measured $^{7}/_{1000}$ inch thick on each edge and ¾ inch thick in the middle.

The Postal Service requires the packaging of all CMM pieces—whether those pieces are transported by the mailer or sent using Express Mail or Priority Mail drop shipment—in order to minimize the potential for damage to the pieces. Moreover, for nonuniform CMM pieces, the mailer must also counterstack the pieces to ensure stability of packages throughout transportation and processing. Counterstacking is already a widely observed practice by mailers producing certain types of flat-size mailpieces not only to stabilize packages of such pieces but also to create uniform packages that take up less space in the mailing containers. Although it would be permissible to create pieces with extreme dimensions of thickness, packaging of such pieces is still possible because there is no minimum number of pieces for a package. In the case the commenter mentioned, the mailer could line several pieces in a row and then shrinkwrap those pieces to unitize the package.

For the reasons presented in the proposed rule and those noted above in this final rule, and in consideration of the public comments received, the Postal Service adopts the following changes in the *Domestic Mail Manual,* which is incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

C Characteristics and Content

C000 General Information

C010 General Mailability Standards

1.0 MINIMUM AND MAXIMUM DIMENSIONS

1.1 Minimum

[Revise 1.1 to read as follows:]

For mailability, the following standards apply:

a. All mailpieces (except Customized MarketMail pieces mailed under E660 and keys and identification devices mailed under E130) that are ¼ inch thick or less must be rectangular, with four square corners and parallel opposite sides.

b. All mailpieces must be at least 3½ inches high and at least 5 inches long (see Exhibit 1.1).

c. All mailpieces must be at least 0.007 inch thick.

* * * * *

1.3 Length and Height

* * * * *

[Redesignate current 1.3c as new 1.3d and add new 1.3c to read as follows:]

c. Standard Mail Customized MarketMail.

* * * * *

C600 Standard Mail

1.0 DIMENSIONS

1.1 Basic Standards

These standards apply to Standard Mail:

* * * * *

[Revise 1.1b to read as follows:]

b. Presorted rate and Customized MarketMail pieces are subject only to the basic mailability standards in C010.

* * * * *

[Redesignate current 2.0 through 5.0 as new 3.0 through 6.0, respectively; add new 2.0 to read as follows:]

2.0 CUSTOMIZED MARKETMAIL

Mailpieces prepared as Customized MarketMail (CMM) under E660 must meet these additional standards and physical characteristics:

a. The material used for constructing the pieces must be free of sharp edges, protrusions, and other design elements that could cause harm or injury to USPS personnel handling these pieces.

b. The dimensions of the pieces must not be smaller than the minimum dimensions for letter-size mail in C050 or greater than the maximum dimensions for flat-size mail in C050. Length and height are defined as follows:

(1) The length and the axis of length are determined by drawing a straight line between the two outer points most distant from each other.

(2) The height is determined by drawing perpendicular lines to the points that are the greatest distance above and below the axis of length. The sum of these two lines defines the height.

c. The maximum weight may not exceed 3.3 ounces.

d. Pieces may be rectangular or nonrectangular, may be uniform or nonuniform in thickness, and may include die cuts, holes, and voids.

e. Pieces must be flexible enough to fit inside a minimum-size mail receptacle measuring 4⅞ inches wide, 14⅞ inches high, and 5⅞ inches long (deep).

f. Design approval by the district business mail entry manager is not required, but it is recommended.

3.0 RESIDUAL SHAPE SURCHARGE

[Revise 3.0 to read as follows:]

Mail that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge. Mail that is prepared as Customized MarketMail under E660 is also subject to the residual shape surcharge. There are different surcharges for Presorted rate pieces and Enhanced Carrier Route rate pieces. Only the surcharges for Presorted rate pieces apply to CMM pieces.

* * * * *

D DEPOSIT, COLLECTION, AND DELIVERY

D000 Basic Information

* * * * *

D040 Delivery of Mail

* * * * *

D042 Conditions of Delivery

* * * * *

[Revise heading of 7.0 to read as follows:]

7.0 CARRIER RELEASE

[Redesignate current text of 7.0 as 7.1 and add heading to read as follows:]

7.1 Parcels

An uninsured parcel may not be left in an unprotected place, such as a porch or stairway, unless the addressee has filed a written order, or the mailer has endorsed the parcel ''Carrier—Leave If No Response.'' The endorsement must appear directly below the return address as specified in M012.

[Add new 7.2 to read as follows:]

7.2 Customized MarketMail

Any matter mailed as Customized MarketMail under E660 must bear the endorsement ''Carrier—Leave If No Response'' as specified in M012.

* * * * *

E Eligibility

* * * * *

E100 First-Class Mail

E110 Basic Standards

1.0 CLASSIFICATION AND DESCRIPTION

1.1 Eligibility

[Revise 1.1 to read as follows:]

All mailable matter may be sent as First-Class Mail (which for the purposes of the standards in 1.0 includes Priority Mail) or as Express Mail, except Customized MarketMail under E660 or other matter prohibited by the respective standards.

* * * * *

E600 Standard Mail

E610 Basic Standards

* * * * *

4.0 ENCLOSURES AND ATTACHMENTS

* * * * *

4.3 Nonincidental First-Class Enclosures

[Revise first sentence of 4.3 to read as follows:]

Letters or other pieces of nonincidental First-Class Mail, subject to postage at First-Class Mail rates, may be enclosed with Standard Mail pieces (except matter mailed as Customized MarketMail under E660). * * *

4.4 Nonincidental First-Class Attachments

[Revise first sentence of 4.4 to read as follows:]

Letters or other pieces of nonincidental First-Class Mail may be placed in an envelope and securely attached to the address side of a Standard Mail piece (except matter mailed as Customized MarketMail under E660), or of the principal piece, as applicable. * * *

4.5 Attachment of Other Standard Mail Matter

[Revise introductory sentence to read as follows:]

The front or back cover page of a Standard Mail piece (except Customized MarketMail pieces) may bear an attachment that is also Standard Mail matter if:

* * * * *

[Revise 4.5b to read as follows:]

b. The material qualifies for and is mailed at Standard Mail rates.

* * * * *

5.0 RATES

5.1 General Information

[Revise 5.1 to read as follows:]

All Standard Mail rates are presorted rates (including all nonprofit rates). These rates apply to mailings meeting the basic standards in E610 and the corresponding standards for Presorted rates under E620, Enhanced Carrier Route rates under E630, automation rates under E640, or Customized MarketMail rates under E660. Except for Customized MarketMail pieces, destination entry discount rates are available under E650, and barcode discounts are available for machinable parcels under E620. A mailpiece is subject to the residual shape surcharge if it is prepared as a parcel, or if it is not letter-size or flat-size under C050, or if it is prepared as a Customized MarketMail piece under E660. Nonprofit rates may be used only by organizations authorized by the USPS under E670. Not all processing categories qualify for every rate. Pieces are subject to either a single minimum per piece rate or a combined piece/pound rate, depending on the weight of the individual pieces in the mailing under 5.2 or 5.3.

5.2 Minimum Per Piece Rates

The minimum per piece rates (*i.e.*, the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise 5.2b and 5.2c to read as follows:]

b. Letters and Nonletters. In applying the minimum per piece rates, a mailpiece is categorized as either a letter or a nonletter, based on whether the piece meets the letter-size standard in C050, without regard to placement of the address on the piece, except under these conditions:

(1) If the piece meets both the definition of a letter in C050 and the definition of an automation flat in C820, the piece may be prepared and entered at an automation flat (nonletter) rate.

(2) If the piece is prepared for automation letter rates, address placement is used to determine the length when applying the size standards and aspect ratio requirements to qualify for automation letter rates under C810. For this purpose, the length is considered to be the dimension parallel to the address.

(3) If the piece is mailed as a Customized MarketMail piece under E660, the piece is always subject to the applicable Regular or Nonprofit Standard Mail basic nonletter per piece rate and must not exceed the maximum weight for those rates.

c. Individual Rates. There are separate minimum per piece rates for each subclass (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route) and within each subclass for the type of mailing and the level of presort within each mailing under E620, E630, E640, and E660. Except for Customized MarketMail pieces, discounted per piece rates also may be claimed for destination entry mailings (destination bulk mail center (DBMC), destination sectional center facility (DSCF), and destination delivery unit (DDU)) under E650. DDU rates are available only for mail entered at Enhanced Carrier Route or Nonprofit Enhanced Carrier Route rates. *See* R600 for individual per piece rates.

5.3 Piece/Pound Rates

[Revise 5.3 by adding a new sentence after the first sentence to read as follows:]

* * * Pieces exceeding 3.3 ounces may not be mailed as Customized MarketMail. * * *

* * * * *

[Revise heading of 5.4 to read as follows:]

5.4 Machinable Parcel Barcode Discount

[Revise last sentence to read as follows:]

* * * Pieces mailed at Enhanced Carrier Route, Nonprofit Enhanced Carrier Route, or Customized MarketMail rates are not eligible for a barcoded discount.

5.5. Residual Shape Surcharge

[Revise 5.5 to read as follows:]

Any Standard Mail piece that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge. Any piece that is prepared as Customized MarketMail under E660 is also subject to the residual shape surcharge. There are different surcharges for Presorted rate pieces and Enhanced Carrier Route rate pieces. Only the surcharges for Presorted rate pieces apply to Customized MarketMail pieces.

* * * * *

9.0 SPECIAL SERVICES

* * * * *

9.3 Ineligible Matter

Special services may not be used for any of the following types of Standard Mail:

* * * * *

[Add 9.3e to read as follows:]

e. Pieces mailed as Customized MarketMail.

* * * * *

E620 Presorted Rates

* * * * *

[Revise heading and text of 3.0 to read as follows:]

3.0 RESIDUAL SHAPE SURCHARGE

Any Presorted Standard Mail piece that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge.

* * * * *

E630 Enhanced Carrier Route Rates

* * * * *

5.0 RESIDUAL SHAPE SURCHARGE

[Revise 5.0 to read as follows:]

Any Enhanced Carrier Route Standard Mail piece that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge.

* * * * *

E650 Destination Entry

1.0 BASIC STANDARDS

1.1 Rate Application

[Revise first sentence of 1.1 to read as follows:]

Except for Customized MarketMail pieces as defined in E660, Regular, Nonprofit, Enhanced Carrier Route, and Nonprofit Enhanced Carrier Route Standard Mail pieces meeting the basic standards in E610 may qualify for the destination BMC, SCF, or DDU entry rates, as applicable, if deposited at the correct destination postal facility, subject to the general standards below and the specific standards in 5.0, 6.0, and 7.0, respectively. * * *

* * * * *

[Add new E660 to read as follows:]

E660 Customized MarketMail

Summary

E660 describes the eligibility standards for Customized MarketMail (CMM) pieces including standards for minimum volumes, addressing, and drop shipment.

1.0 BASIC STANDARDS

1.1 General

Customized MarketMail (CMM) is an option for mailing nonrectangular and irregular-shaped Regular Standard Mail and Nonprofit Standard Mail pieces if the pieces weigh 3.3 ounces or less and meet the physical characteristics and the dimensional requirements in C600 and the mail preparation standards in

M660. Other Regular and Nonprofit Standard Mail pieces measuring ¾ inch thick or less and meeting the applicable standards in C600, E660, and M660 may be entered as CMM at the mailer's option. CMM must be entered directly at a destination delivery unit (DDU).

1.2 Basic Standards

All pieces in a CMM mailing must:

a. Meet the basic standards for Standard Mail in E610 and, for Nonprofit Standard Mail, the additional standards in E670.

b. Be part of a single mailing of at least 200 addressed pieces. All pieces must be identical in size, shape, and weight unless excepted by standard under an approved postage payment system.

c. Bear a complete delivery address using the exceptional address format or occupant address format under A020 with the correct ZIP Code or ZIP+4 code. Each piece must also bear a carrier release endorsement as specified by D042. These additional addressing standards apply:

(1) Detached address labels (DALs) under A060 are not permitted.

(2) Ancillary service endorsements under F010 are not permitted.

(3) All 5-digit ZIP Codes included in addresses on pieces must be verified and corrected within 12 months before the mailing date, using a USPS-approved method. The mailer's signature on the postage statement certifies that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. An address meeting this standard may be used in mailings at any other rates to which the standard applies during the 12-month period after its most recent update.

(4) At the mailer's option, a carrier route information line under M014 may be added. If this option is used, a carrier route code must be applied to every piece in the mailing and must be applied using CASS-certified software and the current USPS Carrier Route File scheme, hard copy Carrier Route Files, or another Address Information Systems (AIS) product containing carrier route information, subject to A930 and A950. Carrier route information must be updated within 90 days before the mailing date.

d. Be marked, sorted, and documented as specified in M660.

e. Be entered at the destination delivery unit appropriate to the delivery address on the corresponding mail, as a mailing subject to the applicable requirements in E610 and E650, as a mailing using Express Mail or Priority Mail drop shipment under M072, or as a plant-verified drop shipment (PVDS) mailing under P950. Minimum volumes per destination are not required.

2.0 RATES

Each CMM piece is subject to the Presorted Regular or Nonprofit Standard Mail nonletter, nondestination entry basic rate plus the residual shape surcharge. CMM is not eligible for the parcel barcode discount.

3.0 SPECIAL SERVICES

CMM is not eligible for any special service.

* * * * *

E700 Package Services

E710 Basic Standards

1.0 BASIC INFORMATION

1.1 Definition

[Revise first sentence of 1.1 to read as follows:]

Package Services mail consists of mailable matter that is neither mailed or required to be mailed as First-Class Mail nor entered as Periodicals (unless permitted or required by standard) or as Customized MarketMail under E660.* * *

* * * * *

F Forwarding and Related Services

F000 Basic Services

F010 Basic Information

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

* * * * *

5.3 Standard Mail

Undeliverable-as-addressed (UAA) Standard Mail is treated as described in Exhibit 5.3a and Exhibit 5.3b, with these additional conditions:

* * * * *

[Add 5.3k to read as follows:]

k. Customized MarketMail under E660 is not eligible to use ancillary service endorsements.

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.4 Mailings

Mailings are defined as:

* * * * *

d. Standard Mail. Except as provided in E620.1.2, the types of Standard Mail listed below may not be part of the same mailing. See M041, M045, M610, M620, and M900 for copalletized, combined, or mixed-rate mailings.

* * * * *

[Add 1.4d(8) to read as follows:]

(8) Customized MarketMail and any other type of mail.

* * * * *

M012 Markings and Endorsements

* * * * *

2.0 MARKINGS—FIRST-CLASS MAIL AND STANDARD MAIL

2.1 Placement

Markings must be placed as follows:

* * * * *

[Revise 2.1b to read as follows:]

b. Other Markings. The rate-specific markings ''AUTO,'' ''AUTOCR,'' ''Presorted'' (or ''PRSRT''); ''Single-Piece'' (or ''SNGLP'') (First-Class Mail only); and ''ECRLOT,'' ''ECRWSH,'' ''ECRWSS,'' and ''Customized MarketMail'' (or ''CUST MKTMAIL'' or ''CMM'') (Standard Mail only)) may be placed as follows:

(1) In the location specified in 2.1a.

(2) In the address area on the line directly above or two lines above the address if the marking appears alone or if no other information appears on the line with the marking except optional endorsement line information under M013 or carrier route package information under M014.

(3) If preceded by two asterisks (**), the ''AUTO,'' ''AUTOCR,'' ''PRESORTED'' (or ''PRSRT''), ''CUSTOMIZED MARKETMAIL'' (or ''CUST MKTMAIL'' or ''CMM''), or ''Single-Piece'' (or ''SNGLP'') marking also may be placed on the line directly above or two lines above the address in a mailer keyline or a manifest keyline, or it may be placed above the address and below the postage in an MLOCR ink-jet printed date correction/meter drop shipment line. Alternatively, the ''AUTO,'' ''AUTOCR,'' ''PRSRT,'' or ''SNGLP'' marking may be placed to the left of the barcode clear zone (subject to the standards in C840) on letter-size pieces.

* * * * *

M030 Containers

* * * * *

M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

* * * * *

Exhibit 1.3 3–Digit Content Identifier Numbers

[Revise Exhibit 1.3 by adding the following entries before ''ECR Irregular Parcels—Nonautomation'' to read as follows:]

* * * * *

STANDARD MAIL

Class and mailing	CIN	Human-readable content line
CMM (letter trays)	206	DEL LTR STD CMM MAN
CMM (flat trays)	207	DEL FLTS STD CMM MAN
CMM (sacks)	205	DEL STD CMM MAN

* * * * *

M033 Sacks and Trays

1.0 BASIC STANDARDS

* * * * *

1.2 Standard Containers

[Revise 1.2 by inserting new sentence after first sentence to read as follows:]

* * * Containers for Customized MarketMail are specified in M660.

* * *

* * * * *

[Revise Exhibit 1.2 by adding the following entry at the end to read as follows:]

Mail class	Processing USPS	Container category
* * * * *	* * * * *	* * * * *
Standard mail	* * * * *	* * * * *
	Customized MarketMail under M660.	Letter tray (with sleeve), flat tray (with green lid inverted), white sack

* * * * *

M070 Mixed Classes

* * * * *

M072 Express Mail and Priority Mail Drop Shipment

1.0 BASIC STANDARDS

1.1 Enclosed Mail

[Revise last sentence of 1.1 to read as follows:]

* * * When a drop shipment is destined to a 5-digit facility, then sacking or traying is not required for letters or flats, if all enclosed presort destination packages are destined to the same 5-digit ZIP Code as the Express Mail or Priority Mails pouch, sack, or container.

* * * * *

1.3 Containers for Expedited Transport

[Revise 1.3 to read as follows:]

Acceptable containers for expedited transport are as follows:

a. An Express Mail drop shipment must be contained in a blue and orange Express Mail pouch, except that Customized MarketMail pieces under E660 may be contained in USPS-provided Express Mail envelopes and cartons or in any properly labeled container supplied by the mailer.

b. A Priority Mail drop shipment must be contained in either an orange Priority Mail sack or a letter-size tray, except that Customized MarketMail pieces under E660 may be contained in USPS-provided Priority Mail envelopes and cartons or in any properly labeled container supplied by the mailer.

* * * * *

1.7 Label 23

[Revise 1.7 to read as follows:]

As an alternative to sacks for Priority Mail drop shipments, letter trays or mailer-supplied containers for Customized MarketMail pieces under E660 may be used as follows:

a. Label 23 is affixed to the letter tray or mailer-supplied container. A single Label 23 may be used to identify two letter trays strapped together. Mailer-supplied containers may not be strapped together.

b. If two letter trays are strapped together, each tray must be of identical size and individually strapped under M033.1.5. Label 23 must be affixed to the sleeve of the top tray before strapping. The trays must be strapped securely around the length of the two trays.

c. The total weight of two trays strapped together or mailer-supplied containers used for CMM may not exceed 70 pounds.

* * * * *

M600 Standard Mail

* * * * *

[Add new M660 to read as follows:]

M660 Customized MarketMail

Summary

M660 describes the basic preparation and marking standards for Customized MarketMail (CMM) pieces meeting the eligibility standards in E660.

1.0 BASIC STANDARDS

1.1 All Mailings

All mailings and all pieces in each mailing prepared as Customized MarketMail (CMM) are subject to specific preparation standards in 1.0 and 2.0 and to these general standards:

a. All pieces must meet the standards for basic eligibility in E610 and specific eligibility in E660. Nonprofit Standard Mail pieces must meet the additional eligibility standards in E670.

b. CMM pieces must not be part of a mailing containing any other type of Standard Mail pieces.

c. Each mailing must meet the applicable standards for mail preparation in M010 and M020 and the following:

(1) Subject to the marking standards in M012, Regular Standard Mail pieces must be marked ''Presorted Standard'' (or ''PRSRT STD'') and Nonprofit Standard Mail pieces must be marked ''Nonprofit Organization'' (or

''Nonprofit Org.'' or ''Nonprofit''). All pieces must also be marked ''Customized MarketMail,'' ''CUST MKTMAIL,'' or ''CMM.''

(2) At the mailer's option, a carrier route information line under M014 may be added. If this option is used, a carrier route code must be applied to every piece in the mailing and must be applied using CASS-certified software and the current USPS Carrier Route File scheme, hard copy Carrier Route Files, or another AIS product containing carrier route information, subject to A930 and A950. Carrier route information must be updated within 90 days before the mailing date.

d. All pieces in the mailing must meet the specific sortation and preparation standards in M660.

e. Pieces are subject to the rate eligibility specified in E660.

1.2 Postage

CMM is subject to the same options of postage payment (precanceled stamps, metered postage, or permit imprint) for Standard Mail pieces as permitted under P600.

1.3 Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile with the residual shape surcharge, must accompany each mailing. The mailer must also provide an extra copy of the postage statement and a sample of the CMM mailpiece. The sample and the copy postage statement are then forwarded by the USPS to the New York Rates and Classification Service Center (*see* G042 for address). Mailings of nonidenticial-weight pieces or mailings using more than three different types of containers must also be supported by standardized documentation meeting the standards in P012.

Documentation for nonidentical-weight pieces is not required if the correct rate is affixed to each piece.

2.0 PREPARATION

2.1 Packaging

Two or more pieces to the same 5-digit destination must be packaged under M020 in any container to maintain the integrity and stability of the pieces throughout transit and handling. The maximum weight for any package is 20 pounds. Pieces of irregular thickness must also be counterstacked as provided in M020. At the mailer's option, CMM may be prepared in carrier route packages, subject to the applicable standards in M050 and E630.

2.2 Containers

If more than three types of containers are used, the mailing must be prepared using an approved manifest mailing system (MMS) under P910, unless the Business Mailer Support (BMS) manager approves another postage payment system. Each mailing presented in mailer-supplied containers must be accompanied by sample containers for tare weight calculations. The size of the containers must be appropriate to the dimensions of the pieces, and the number of containers must be appropriate to the volume of pieces in the mailing. If Express Mail or Priority Mail drop shipment is used, containers are subject to the standards in M072.

2.3 Containerizing and Labeling

Mail must be prepared in 5-digit, 5-digit scheme using L606, or 5-digit carrier route containers, with no minimum volume (piece or weight) required for an individual container. In addition to the required labeling, mailer-supplied containers must be marked ''DELIVERY UNIT—OPEN AND DISTRIBUTE'' on the container label or on the address side of the container. Containers are prepared and labeled as follows:

a. PVDS drop shipments must be prepared in 5-digit or 5-digit carrier route letter trays, sacks, or in mailer-supplied containers and labeled as follows:

(1) Line 1: City, state, and 5-digit ZIP Code on mail.

(2) Line 2: ''DEL LTR STD CMM MAN'' (for letter trays); ''DEL FLTS STD CMM MAN'' (for flat trays); ''DEL STD CMM MAN'' (for sacks or mailer-supplied containers).

(3) Line 3: Office of mailing or mailer information (see M031).

b. Express Mail and Priority Mail drop shipments must be prepared in USPS-provided Express Mail or Priority Mail containers (*i.e.*, pouches, sacks, cartons, or envelopes) or in mailer-supplied containers and must be labeled under M072.

* * * * *

P Postage and Payment Methods

P000 Basic Information

* * * * *

P040 Permit Imprints

* * * * *

4.0 INDICIA FORMAT

* * * * *

Exhibit 4.1b Indicia Formats

[Add an example of ''Cust MktMail,'' permit imprint indicia to read as follows:]

PRSRT STD
CUST MKTMAIL
U.S. POSTAGE PAID
NEW YORK, NY
PERMIT NO. 1

* * * * *

R Rates and Fees

* * * * *

R600 Standard Mail

1.0 REGULAR STANDARD MAIL

* * * * *

1.2 Nonletters—3.3 oz. or Less

* * * * *

[Add footnote 2 to ''Presorted'' to read as follows:]

2. Customized MarketMail pieces are subject to the Basic nondestination entry nonletter rate, plus the residual shape surcharge.

* * * * *

3.0 NONPROFIT STANDARD MAIL

* * * * *

3.2 Nonletters—3.3 oz. or Less

* * * * *

[Add footnote 2 to ''Presorted'' to read as follows:]

2. Customized MarketMail pieces are subject to the Basic nondestination entry nonletter rate, plus the residual shape surcharge.

* * * * *

S Special Services

S000 Miscellaneous Services

* * * * *

S070 Mixed Classes

1.0 BASIC INFORMATION

1.1 Priority Mail Drop Shipment

[Revise 1.0 to read as follows:]

For a Priority Mail drop shipment, no special services may be added to the Priority Mail segment, and the mail enclosed may receive only the following services:

a. First-Class Mail pieces may be sent with Certified Mail service or special handing, or, for First-Class Mail parcels only, electronic option Delivery Confirmation service or electronic option Signature Confirmation service.

b. Standard Mail pieces subject to the residual shape surcharge (except Customized MarketMail pieces) may be sent with electronic option Delivery Confirmation service.

c. Package Services mail may be sent with special handling or, for Package

Services parcels only, electronic option Delivery Confirmation service or electronic option Signature Confirmation service.

* * * * *

S500 Special Services for Express Mail

* * * * *

2.0 EXPRESS MAIL DROP SHIPMENT

[Revise 2.0 to read as follows:]

For an Express Mail drop shipment, the content of each Express Mail pouch is considered one mailpiece for indemnity coverage, and the mail enclosed may receive only the following services:

a. First-Class Mail pieces may be sent with Certified Mail service or special handing, or, for First-Class Mail parcels only, electronic option Delivery Confirmation service or electronic option Signature Confirmation service.

b. Priority Mail pieces may be sent with Certified Mail service, special handing, electronic option Delivery Confirmation, or electronic option Signature Confirmation.

c. Standard Mail pieces subject to the residual shape surcharge (except Customized MarketMail) may be sent with electronic option Delivery Confirmation service.

d. Package Services mail may be sent with special handling or, for Package Services parcels only, electronic option Delivery Confirmation service or electronic option Signature Confirmation service.

* * * * *

I Index Information

I000 Information

* * * * *

I020 References

* * * * *

I022 Subject Index

* * * * *

[Add the following two entries to read as follows:]

Customized MarketMail, C600, E660, M660

* * * * *

Standard Mail

* * * * *

MAIL PREPARATION

* * * * *

CUSTOMIZED MARKETMAIL, M660

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–17351 Filed 7–8–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–200317; FRL–7511–6]

Approval and Promulgation of Air Quality Implementation Plans; Mecklenburg County, NC Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of materials submitted by North Carolina that are incorporated by reference (IBR) into the Mecklenburg County portion of the North Carolina State implementation plan (SIP). The regulations affected by this update have been previously submitted by the Local agency through the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective July 9, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Rosymar De La Torre Colon at the above Region 4 address or at (404) 562–8965. E-mail: *delatorre.rosymar@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On October 22, 2002, EPA published a document in the **Federal Register** (67 FR 64999) beginning the table for Mecklenburg County, North Carolina IBR material. In this document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the

Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 9, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II

■ 2. Section 52.1770 is amended by revising paragraph (b) and table 3 to paragraph (c) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(b) Incorporation by reference. (1) Material listed in paragraph (c) of this section with an EPA approval date prior to December 1, 2002, for North Carolina (Table 1 of the North Carolina State Implementation Plan) and January 1, 2003 for Mecklenburg County, North Carolina (Table 3 of the North Carolina State Implementation Plan), was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) of this section with EPA approval dates after January 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilations at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State and Local implementation plans listed in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) * * *

TABLE 3.—EPA APPROVED MECKLENBURG COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
Article 1.000 Permitting Provisions for Air Pollution Sources, Rules and Operating Regulations for Acid Rain Sources, Title V and Toxic Air Pollutants				
Section 1.5100 General Provisions and Administrations				
1.5101	Declaration of Policy	06/14/1990	05/02/91, 56 FR 20140.	
1.5102	Definition of Terms	11/21/2000	10/22/02, 67 FR 64999.	
1.5103	Enforcement Agency	06/14/1990	05/02/91, 56 FR 20140.	

TABLE 3.—EPA APPROVED MECKLENBURG COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
1.5104	General Duties and Powers of the Director, With the Approval of the Board.	06/14/1990	05/02/91, 56 FR 20140.	
1.5111	General Recordkeeping, Reporting and Monitoring Requirements	07/01/96	06/30/03, 68 FR 38631.	
	Section 1.5200 Air Quality Permits			
1.5210	Purpose and Scope	06/14/1990	05/02/91, 56 FR 20140.	
1.5211	Applicability	11/21/2000	10/22/02, 67 FR 64999.	
1.5212	Applications	07/01/96	06/30/03, 68 FR 38631.	
1.5213	Action on Application; Issuance of Permit	07/01/96	06/30/03, 68 FR 38631.	
1.5214	Commencement of Operation	07/01/96	06/30/03, 68 FR 38631.	
1.5215	Application Processing Schedule	07/01/96	06/30/03, 68 FR 38631.	
1.5216	Incorporated By Reference	06/06/1994	07/28/95, 60 FR 38715.	
1.5217	Confidential Information	06/14/1990	05/02/91, 56 FR 20140.	
1.5218	Compliance Schedule for Previously Exempted Activities	06/14/1990	05/02/91, 56 FR 20140.	
1.5219	Retention of Permit at Permitted Facility	06/06/1994	07/28/95, 60 FR 38715.	
1.5220	Applicability Determinations	06/14/1990	05/02/91, 56 FR 20140.	
1.5221	Permitting of Numerous Similar Facilities	06/06/1994	07/28/95, 60 FR 38715.	
1.5222	Permitting of Facilities at Multiple Temporary Sites	06/06/1994	07/28/95, 60 FR 38715.	
1.5230	Permitting Rules and Procedures	06/14/1990	05/02/91, 56 FR 20140.	
1.5231	Permit Fees	07/01/96	06/30/03, 68 FR 38631.	
1.5232	Issuance, Revocation, and Enforcement of Permits	07/01/96	06/30/03, 68 FR 38631.	
1.5234	Hearings	06/06/1994	07/28/95, 60 FR 38715.	
1.5235	Expedited Application Processing Schedule	06/14/1990	05/02/91, 56 FR 20140.	
	Section 1.5300 Enforcement; Variances; Judicial Review			
1.5301	Special Enforcement Procedures	06/14/1990	05/02/91, 56 FR 20140.	
1.5302	Criminal Penalties	06/14/1990	05/02/91, 56 FR 20140.	
1.5303	Civil Injunction	06/14/1990	05/02/91, 56 FR 20140.	
1.5304	Civil Penalties	06/14/1990	05/02/91, 56 FR 20140.	
1.5305	Variances	07/01/96	06/30/03, 68 FR 38631.	
1.5306	Hearings	07/01/96	06/30/03, 68 FR 38631.	
1.5307	Judicial Review	06/14/1990	05/02/91, 56 FR 20140.	
	Section 1.5600 Transportation Facility Procedures			
1.5604	Judicial Review	07/01/96	06/30/03, 68 FR 38631.	
1.5607	Judicial Review	07/01/96	06/30/03, 68 FR 38631.	
	Article 2.0000 Air Pollution Control Regulations and Procedures Section 2.0100 Definitions And References			
2.0101	Definitions	06/14/1990	05/02/91, 56 FR 20140.	
2.0104	Incorporated By Reference	06/14/1990	05/02/91, 56 FR 20140.	
	Section 2.0200 Air Pollution Sources			
2.0201	Classification of Air Pollution Sources	06/14/1990	05/02/91, 56 FR 20140.	
2.0202	Registration of Air Pollution Sources	06/14/1990	05/02/91, 56 FR 20140.	
	Section 2.0300 Air Pollution Emergencies			
2.0301	Purpose	06/14/1990	05/02/91, 56 FR 20140.	
2.0302	Episode Criteria	06/14/1990	05/02/91, 56 FR 20140.	
2.0303	Emission Reduction Plans	06/14/1990	05/02/91, 56 FR 20140.	
2.0304	Preplanned Abatement Program	06/14/1990	05/02/91, 56 FR 20140.	
2.0305	Emission Reduction Plan: Alert Level	06/14/1990	05/02/91, 56 FR 20140.	
2.0306	Emission Reduction Plan: Warning Level	06/14/1990	05/02/91, 56 FR 20140.	
2.0307	Emission Reduction Plan: Emergency Level	06/14/1990	05/02/91, 56 FR 20140.	
	Section 2.0400 Ambient Air Quality Standards			
2.0401	Purpose	06/14/1990	05/02/91, 56 FR 20140.	
2.0402	Sulfur Oxides	06/14/1990	05/02/91, 56 FR 20140.	
2.0403	Total Suspended Particulates	06/14/1990	05/02/91, 56 FR 20140.	
2.0404	Carbon Monoxide	06/14/1990	05/02/91, 56 FR 20140.	
2.0405	Ozone	06/14/1990	05/02/91, 56 FR 20140.	
2.0407	Nitrogen Dioxide	06/14/1990	05/02/91, 56 FR 20140.	
2.0408	Lead	06/14/1990	05/02/91, 56 FR 20140.	
2.0409	PM10 Particulate Matter	06/14/1990	05/02/91, 56 FR 20140.	

TABLE 3.—EPA APPROVED MECKLENBURG COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
	Section 2.0500 Emission Control Standards			
2.0501	Compliance With Emission Control Standards	06/14/1990	05/02/91, 56 FR 20140.	
2.0502	Purpose	06/14/1990	05/02/91, 56 FR 20140.	
2.0503	Particulates from Fuel Burning Indirect Heat Exchangers	06/14/1990	05/02/91, 56 FR 20140.	
2.0504	Particulates from Wood Burning Indirect Heat Exchangers	06/14/1990	05/02/91, 56 FR 20140.	
2.0506	Particulates from Hot Mix Asphalt Plants	06/14/1990	05/02/91, 56 FR 20140.	
2.0507	Particulates from Chemical Fertilizer Manufacturing Plants	06/14/1990	05/02/91, 56 FR 20140.	
2.0508	Particulates from Pulp and Paper Mills	06/14/1990	05/02/91, 56 FR 20140.	
2.0509	Particulates from Mica or Feldspar Processing Plants	06/14/1990	05/02/91, 56 FR 20140.	
2.0510	Particulates from Sand, Gravel, or Crushed Stone Operations	06/14/1990	05/02/91, 56 FR 20140.	
2.0511	Particulates from Lightweight Aggregate Processes	06/14/1990	05/02/91, 56 FR 20140.	
2.0512	Particulates from Wood Products Finishing Plants	06/14/1990	05/02/91, 56 FR 20140.	
2.0513	Particulates from Portland Cement Plants	06/14/1990	05/02/91, 56 FR 20140.	
2.0514	Particulates from Ferrous Jobbing Foundries	06/14/1990	05/02/91, 56 FR 20140.	
2.0515	Particulates from Miscellaneous Industrial Processes	06/14/1990	05/02/91, 56 FR 20140.	
2.0516	Sulfur Dioxide Emissions from Combustion Sources	06/14/1990	05/02/91, 56 FR 20140.	
2.0517	Emissions From Plants Producing Sulfuric Acid	06/14/1990	05/02/91, 56 FR 20140.	
2.0518	Miscellaneous Volatile Organic Compound Emissions	11/21/2000	10/22/02, 67 FR 64999.	
2.0519	Control of Nitrogen Dioxide and Nitrogen Oxides Emissions	06/14/1990	05/02/91, 56 FR 20140.	
2.0523	Control of Conical Incinerators	11/21/2000	10/22/02, 67 FR 64999.	
2.0527	Emissions from Spodumene Ore Roasting	06/14/1990	05/02/91, 56 FR 20140.	
2.0530	Prevention of Significant Deterioration	06/14/1990	05/02/91, 56 FR 20140.	
2.0531	Sources in Nonattainment Areas	06/14/1990	05/02/91, 56 FR 20140.	
2.0532	Sources Contributing to an Ambient Violation	06/14/1990	05/02/91, 56 FR 20140.	
2.0533	Stack Height	06/14/1990	05/02/91, 56 FR 20140.	
2.0535	Excess Emissions Reporting and Malfunctions	06/14/1990	05/02/91, 56 FR 20140.	
2.0538	Control of Ethylene Oxide Emissions	06/14/1990	05/02/91, 56 FR 20140.	
2.0539	Odor Control of Feed Ingredient Manufacturing Plants	06/14/1990	05/02/91, 56 FR 20140.	
	Section 2.0600 Monitoring: Recordkeeping: Reporting			
2.0601	Purpose and Scope	06/14/1990	05/02/91, 56 FR 20140.	
2.0602	Definitions	06/14/1990	05/02/91, 56 FR 20140.	
2.0604	Exceptions to Monitoring and Reporting Requirements	06/14/1990	05/02/91, 56 FR 20140.	
2.0605	General Recordkeeping and Reporting Requirements	06/14/1990	05/02/91, 56 FR 20140.	
2.0606	Sources Covered by Appendix P of 40 CFR Part 51	06/14/1991	05/02/91, 56 FR 20140.	
2.0607	Large Wood and Wood-Fossil Fuel Combination Units	06/14/1990	05/02/91, 56 FR 20140.	
2.0608	Other Large Coal or Residual Oil Burners	06/14/1990	05/02/91, 56 FR 20140.	
2.0610	Delegation Federal Monitoring Requirements	11/21/2000	10/22/02, 67 FR 64999.	
2.0611	Monitoring Emissions From Other Sources	06/14/1990	05/02/91, 56 FR 20140.	
2.0612	Alternative Monitoring and Reporting Procedures	06/14/1990	05/02/91, 56 FR 20140.	
2.0613	Quality Assurance Program	06/14/1990	05/02/91, 56 FR 20140.	
2.0614	Compliance Assurance Monitoring	06/14/1990	05/02/91, 56 FR 20140.	
2.0615	Delegation	06/14/1990	05/02/91, 56 FR 20140.	
	Section 2.0800 Transportation Facilities			
2.0801	Purpose and Scope	06/14/1990	05/02/91, 56 FR 20140.	
2.0802	Definitions	06/14/1990	05/02/91, 56 FR 20140.	
2.0803	Highway Projects	06/14/1990	05/02/91, 56 FR 20140.	
2.0804	Airport Facilities	06/14/1990	05/02/91, 56 FR 20140.	
	Section 2.0900 Volatile Organic Compounds			
2.0901	Definitions	03/01/1991	06/23/94, 59 FR 32362.	
2.0902	Applicability	11/21/2000	10/22/02, 67 FR 64999.	
2.0903	Recordkeeping: Reporting: Monitoring	07/01/1991	06/23/94, 59 FR 32362.	
2.0906	Circumvention	06/14/1990	05/02/91, 56 FR 20140.	
2.0907	Equipment Installation Compliance Schedule	06/14/1990	05/02/91, 56 FR 20140.	
2.0909	Compliance Schedules for Sources In New Nonattainment Areas	06/14/1990	05/02/91, 56 FR 20140.	
2.0910	Alternate Compliance Schedule	06/14/1990	05/02/91, 56 FR 20140.	
2.0912	General Provisions on Test Methods and Procedures	07/01/1991	06/23/94, 59 FR 32362.	
2.0913	Determination of Volatile Content of Surface Coatings	03/01/1991	06/23/94, 59 FR 32362.	
2.0914	Determination of VOC Emission Control System Efficiency	06/14/1990	05/02/91, 56 FR 20140.	
2.0915	Determination of Solvent Metal Cleaning VOC Emissions	06/14/1990	05/02/91, 56 FR 20140.	
2.0916	Determination: VOC Emissions From Bulk Gasoline Terminals	06/14/1990	05/02/91, 56 FR 20140.	
2.0917	Automobile and Light-Duty Truck Manufacturing	06/14/1990	05/02/91, 56 FR 20140.	
2.0918	Can Coating	06/14/1990	05/02/91, 56 FR 20140.	
2.0919	Coil Coating	06/14/1990	05/02/91, 56 FR 20140.	
2.0920	Paper Coating	06/14/1990	05/02/91, 56 FR 20140.	
2.0921	Fabric and Vinyl Coating	06/14/1990	05/02/91, 56 FR 20140.	

TABLE 3.—EPA APPROVED MECKLENBURG COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
2.0922	Metal Furniture Coating	06/14/1990	05/02/91, 56 FR 20140.	
2.0923	Surface Coating of Large Appliances	06/14/1990	05/02/91, 56 FR 20140.	
2.0924	Magnet Wire Coating	06/14/1990	05/02/91, 56 FR 20140.	
2.0925	Petroleum Liquid Storage in Fixed Roof Tanks	06/14/1990	05/02/91, 56 FR 20140.	
2.0926	Bulk Gasoline Plants	06/14/1990	05/02/91, 56 FR 20140.	
2.0927	Bulk Gasoline Terminals	06/14/1990	05/02/91, 56 FR 20140.	
2.0928	Gasoline Service Stations Stage I	06/14/1990	05/02/91, 56 FR 20140.	
2.0929	Petroleum Refinery	06/14/1990	05/02/91, 56 FR 20140.	
2.0930	Solvent Metal Cleaning	06/14/1990	05/02/91, 56 FR 20140.	
2.0931	Cutback Asphalt	06/14/1990	05/02/91, 56 FR 20140.	
2.0932	Gasoline Truck Tanks and Vapor Collection Systems	06/14/1990	05/02/91, 56 FR 20140.	
2.0933	Petroleum Liquid Storage in External Floating Roof Tanks	06/14/1990	05/02/91, 56 FR 20140.	
2.0934	Coating of Miscellaneous Metal Parts and Products	06/14/1990	05/02/91, 56 FR 20140.	
2.0935	Factory Surface Coating of Flat Wood Paneling	06/14/1990	05/02/91, 56 FR 20140.	
2.0936	Graphic Arts	06/14/1990	05/02/91, 56 FR 20140.	
2.0937	Manufacture of Pneumatic Rubber Tires	06/14/1990	05/02/91, 56 FR 20140.	
2.0939	Determination of Volatile Organic Compound Emissions	06/14/1990	05/02/91, 56 FR 20140.	
2.0940	Determination of Leak Tightness and Vapor Leaks	06/14/1990	05/02/91, 56 FR 20140.	
2.0941	Alternative Method for Leak Tightness	06/14/1990	05/02/91, 56 FR 20140.	
2.0942	Determination of Solvent in Filter Waste	06/14/1990	05/02/91, 56 FR 20140.	
2.0943	Synthetic Organic Chemical and Polymer Manufacturing	06/14/1990	05/02/91, 56 FR 20140.	
2.0944	Manufacture of Polyethylene, Polypropylene and Polystyrene	06/14/1990	05/02/91, 56 FR 20140.	
2.0945	Petroleum Dry Cleaning	06/14/1990	05/02/91, 56 FR 20140.	

[FR Doc. 03–16581 Filed 7–8–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–60, GA–61–200332(a); FRL–7524–6]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of Georgia, through the Georgia Environmental Protection Division (GAEPD), on July 1, 2002, and January 10, 2003. These revisions pertain to Rules for Air Quality Control and Rules for Enhanced Inspection and Maintenance.

DATES: This direct final rule is effective September 8, 2003 without further notice, unless EPA receives adverse comment by August 8, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted by mail to: Scott M. Martin; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in (part (I)(B)(1)(i) through (iii)) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under GA–60, GA–61–200332. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding federal Holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking GA–60, GA–61–200332.'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *martin.scott@epa.gov,* please including the text ''Public comment on proposed rulemaking GA–60, GA–61–200332.'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking GA–60, GA–61–200332.'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Scott M. Martin; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division 12th floor; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9:00 to 3:30 excluding federal Holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

On July 1, 2002, and January 10, 2003, the GAEPD submitted revisions to the Georgia SIP. These revisions pertain to Chapter 391–3–1 Rules for Air Quality Control and Chapter 391–3–20 Enhanced Inspection and Maintenance. The revisions are described below.

III. Analysis of State's Submittal

Description of Revisions Submitted on July 1, 2002

Chapter 391–3–1: Rules For Air Quality Control

Rule 391–3–1.01(nnnn) ''Procedures for Testing and Monitoring Sources of Air Pollutants'' was amended to include the most recent version of the test manual dated April 3, 2002.

Rule 391–3–1–.02(2)(a)(7) ''Excess Emissions'' was amended to add circumstances in which subparagraphs (i) and (ii) will not apply. Subparagraphs (i) and (ii) allow excess emissions during startup, shutdown, or malfunction provided that certain criteria for minimizing emissions are met. Currently the only exception to this allowance is for equipment subject to New Source Performance Standards (NSPS). This amendment expands this exclusion to any State or federal regulation that specifically states that an emission standard applies during startup, shutdown, and malfunctions.

Rule 391–3–1–.02(c) ''Incinerators'' was amended to exempt Commercial/Industrial/Solid Waste Incinerators (CISWI) as they will be subject to the more stringent New Source Performance Standard (NSPS) for CISWI.

Rule 391–3–1–.02(2)(g) ''Sulfur Dioxide'' was amended to exclude kraft pulp mill recovery furnaces. This portion of the rule was not intended to apply to kraft pulp mill recovery boilers. Therefore, the change in wording was made to clarify that these units are exempt from rule 391–3–1–.02(2)(g). Kraft pulp mills are regulated under rule 391–3–1–.02(2)(gg).

Rule 391–3–1–.02(2)(jjj) ''NO_X Emissions from Electric Steam Generating Units'' was amended to make the existing, less stringent, requirements of the rule inapplicable once the more stringent provisions of the rule became effective May 1, 2003.

Chapter 391–3–20: Enhanced Inspection and Maintenance

Rule 391–3–20–.03(7) ''Covered Vehicles; Exemptions'' was amended to update a reference to the Department of Revenue to the Department of Motor Vehicle Safety. The Department of Motor Vehicle Safety now manages the vehicle registration database in Georgia.

Rule 391–3–20–.06(5) ''On-Road Testing'' was amended to revise the requirements for payment of emission reinspections as it relates to high emitting vehicles identified by remote sensing.

Rule 391–3–20–.19(2) ''Management Contractor'' was amended to update a reference to the Department of Revenue.

Rule 391–3–20–.21(3) ''Program Administration Fees'' was amended to remove a reference to disbursement of the administrative fees.

Description of Revisions Submitted on January 10, 2003

Chapter 391–3–1: Rules For Air Quality Control

Rule 391–3–1–.01(nnnn) ''Procedures for Testing and Monitoring Sources of Air Pollutants'' was amended to include the most recent version of the test manual dated September 25, 2002.

Chapter 391–3–20: Enhanced Inspection and Maintenance

Rule 391–3–20–.04 ''Emission Inspection Procedures'' subparagraph (2)(b)(1) was amended to remove an outdated reference date.

Rule 391–3–20–.17 ''Waivers'' was amended to update the repair waiver cost for test year 2003.

IV. Final Action

EPA is approving the aforementioned changes to the Georgia SIP because they are consistent with the Clean Air Act and Agency requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 8, 2003 without further notice unless the Agency receives adverse comments by August 8, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 8, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 26, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

■ 2. In § 52.570(c), the table is amended by revising entries for: ''391–3–1.01''; ''391–3–1.02(a)''; ''391–3–1–02(g)''; ''391–3–1–02(jjj)''; ''391–3–20'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	* *	*	* *	*
391–3–1–.01	Definitions	12/30/02	July 9, 2003	[insert FR citation]
*	* *	*	* *	*
391–3–1–.02(2)(a).	General Provisions	07/17/02	July 9, 2003	[insert FR citation]
*	* *	*	* *	*
391–3–1–.02(2)(g).	Sulfur Dioxide	07/17/02	July 9, 2003	[insert FR citation]
*	* *	*	* *	*
391–3–1–.02(2)(jjj).	NO_X Emissions from Electric steam Generating Units.	07/17/02	July 9, 2003	[insert FR citation]
*	* *	*	* *	*
391–3–20	Enhanced Inspection and Maintenance	12/30/02	July 9, 2003	[insert FR citation]
*	* *	*	* *	*

* * * * *

[FR Doc. 03–17204 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–282–0392; FRL–7515–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; 1-Hour Ozone Standard for Santa Barbara, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to redesignate the Santa Barbara County area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is also approving a 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions to the Santa Barbara portion of the California State Implementation Plan (SIP).

EFFECTIVE DATE: This action is effective August 8, 2003.

ADDRESSES: You can inspect copies of the docket for this action during normal business hours at EPA's Region IX office. Please contact Dave Jesson if you

wish to schedule a visit. You can inspect copies of the SIP materials at the following locations:

U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

California Air Resources Board, 1001 I Street, Sacramento, California, 95812.

Santa Barbara County Air Pollution Control District 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

The plan is also electronically available at: *http://www.sbcapcd.org/sbc/download01.htm.*

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957, or *jesson.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

I. Background

On March 25, 2003 (68 FR 14382–14388), we proposed to approve the 1-hour ozone maintenance plan for Santa Barbara County nonattainment area (''Santa Barbara''), including the motor vehicle emissions budgets, and to grant the State's request that we redesignate the area to attainment, in accordance with Clean Air Act (''CAA'') section 107(d)(3)(E). The maintenance plan and budgets are contained in the Final 2001 Clean Air Plan (''CAP''), which was adopted by the Santa Barbara County Air Pollution Control District (''SBCAPCD'') on December 19, 2002, and submitted by the California Air Resources Board on February 21, 2003. The proposal contains detailed information on the SIP submittal and our evaluation of the submittal against applicable CAA provisions and EPA policies relating to 1-hour ozone maintenance SIPs and budgets.

In the proposal, we stated that final approval would be contingent upon our affirmative finding that the latest update to California's motor vehicle emissions model, known as EMFAC2002, is acceptable for purposes of SIP development and transportation conformity. On April 1, 2003 (68 FR 15720–15723), we published a **Federal Register** notice stating our conclusion that the EMFAC2002 emission factor model is acceptable for use in SIP development and transportation conformity.

II. Public Comments

We received no public comment on our proposed action.

III. EPA Action

In this document, we are finalizing our proposed approval of the Final 2001 CAP for Santa Barbara as meeting applicable provisions for 1-hour ozone maintenance plans, under CAA sections 175A and 110(k)(3). As part of this action, we are finalizing approval of the following specific plan elements. We indicate on which page of our proposal the element is discussed.

(1) Approval of the emission inventories for 1999, 2005, 2010, and 2015, including a growth conformity allowance for the Vandenberg Air Force Base, under CAA section 172(c)(3) and 175A—68 FR 14384.

(2) Approval of the maintenance demonstration through 2015, under CAA section 175A—68 FR 14384–5.

(3) Approval of the SBCAPCD commitment to continue ambient monitoring of the 1-hour ozone NAAQS, under CAA section 175A—68 FR 14385.

(4) Approval of the SBCAPCD commitment to track progress through triennial updates to verify maintenance of the 1-hour ozone NAAQS, under CAA section 175A—68 FR 14385.

(5) Approval of the contingency measures, under CAA section 175A(d)—68 FR 14385 (Table 2).[1]

(6) Approval of the 2005 and 2015 motor vehicle emissions budgets for volatile organic compounds (VOC) and nitrogen oxides (NO_X), under CAA sections 176(c)(2) as adequate for maintenance of the 1-hour ozone NAAQS and for transportation conformity purposes—68 FR 14385–14386.

Finally, we are redesignating Santa Barbara County to attainment for the 1-hour ozone standard under CAA section 107(d)(3)(E).

As discussed, we finalize these actions because, in a separate action, we have found that the EMFAC2002 emission factor model is acceptable.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

[1] On August 27, 2002 (67 FR 54963), we approved these same contingency measures under CAA section 110(K)(3) as strengthening the existing SIP. We are now approving them as meeting the maintenance plan provisions of CAA 175A(d).

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 6, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(314) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(314) New and amended plan for the following agency was submitted on February 21, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Santa Barbara County Air Pollution Control District.

(*1*) Emission Inventories, 1-hour ozone maintenance demonstration, commitments to continue ambient monitoring and to track progress, and contingency measures, as contained in the Final 2001 Clean Air Plan adopted on December 19, 2002.

* * * * *

PART 81—[AMENDED]

■ 1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.305, the California Ozone (1–Hour Standard) table is amended by revising the entry for the Santa Barbara-Santa Maria-Lompoc Area: to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Santa Barbara-Santa Maria-Lompoc Area:		Attainment.		
Santa Barbara County	August 8, 2003.			
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 03–17210 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0220; FRL–7316–6]

Emamectin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of emamectin and its metabolites in or on *Brassica* leafy vegetables (crop group 5); turnip greens; cotton, undelinted seed; cotton gin byproduct; leafy vegetables (except *Brassica*) (crop group 4); fruiting vegetables (crop group 8); and tomato paste. In addition, tolerances are established for indirect or inadvertent combined residues of emamectin and the associated 8,9-Z isomers in or on milk and fat of cattle, goats, hogs, horses, and sheep; meat byproducts, except liver, of cattle, goats, hogs, horses , and sheep; liver of cattle, goats, hogs, horses, and sheep; and meat of cattle, goat, hogs, horses, and sheep. Syngenta Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA) , as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective July 9, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0220, must be received on or before September 8, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Thomas C. Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001; telephone number: (703) 308–9423; e-mail address: harris.thomas@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop Production (NAICS 111, e.g.)
- Animal Production (NAICS 112, e.g.)
- Food Manufacturing (NAICS 311, e.g.)
- Pesticide Manufacturing (NAICS 32532, e.g.)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0220. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of March 20, 2002 (67 FR 12990) (FRL–6824–4), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 7F4845) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. That notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The original petition requested that 40 CFR 180.505 be amended by establishing a tolerance for combined residues of the insecticide emamectin benzoate, 4′-epi-methylamino-4′-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and a maximum of 10% 4′-epi-methlyamino-4′deoxyavermectin B_{1b} benzoate), and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide in or on the raw agricultural commodities fruiting vegetables (except Cucurbits) group at 0.02 parts per million (ppm), *Brassica* leafy vegetables group at 0.025 ppm, leafy vegetables (except *Brassica*) group at 0.1 ppm, cottonseed at 0.025 ppm, cotton gin byproducts at 0.5 ppm.

Based on the EPA analysis of the residue chemistry and toxicological databases, the petition was subsequently revised to express the tolerance as the combined residues of emamectin, (a mixture of a minimum of 90% 4″-epi-methylamino-4″-deoxyavermectin B_{1a} and maximum of 10% 4″-epi-methylamino-4″-deoxyavermectin B_{1b}) and its metabolites 8,9-isomer of the B_{1a} and B_{1b} component of the parent (8,9-ZMA), or 4″-deoxy-4″-epi-amino-avermectin B_{1a} and 4″-deoxy-4″-epi-amino-avermectin B_{1b}; 4″-deoxy-4″-epi-amino avermectin B_{1a} (AB_{1a}); 4″-deoxy-4″-epi-(*N*-formyl-*N*-methyl)amino-avermectin (MFB_{1a}); and 4″-deoxy-4″-epi-(*N*-formyl)amino-avermectin B_{1a} (FAB_{1a}), in or on *Brassica* leafy vegetables (crop group 5) at 0.05 ppm; turnip greens at 0.05 ppm; cotton, undelinted seed at 0.025 ppm; cotton gin byproduct at 0.05 ppm; leafy vegetables (except *Brassica*) (crop group 4) at 0.10 ppm; fruiting vegetables (crop group 8) at 0.02 ppm; and tomato paste at 0.15 ppm. In addition, tolerances are established for indirect or inadvertent combined residues of emamectin (MAB_{1a} + MAB_{1b} isomers) and the associated 8,9-Z isomers (8,9-ZB_{1a} + 8,9-ZB_{1b}) in or on milk and fat of cattle, goats, hogs, horses, and sheep at 0.003 ppm; meat byproducts, except liver, of cattle, goats, hogs, horses, and sheep at 0.005 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.020 ppm; and meat of cattle, goat, hogs, horses, and sheep at 0.002 ppm. Note that the tolerance expression in 40 CFR 180.505 is being changed from emamectin benzoate to emamectin since the enforcement method, Method 244–92–3, Revision 1, analyzes residues of emamectin MAB_1 isomers (not emamectin benzoate), 8,9-ZMA, AB_{1a}, MFB_{1a}, and FAB_{1a} in/on crops.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory

requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of emamectin, (a mixture of a minimum of 90% 4″-epi-methylamino-4″-deoxyavermectin B_{1a} and maximum of 10% 4″-epi-methylamino-4″-deoxyavermectin B_{1b}) and its metabolites 8,9-isomer of the B_{1a} and B_{1b} component of the parent (8,9-ZMA), or 4″-deoxy-4″-epi-amino-avermectin B_{1a} and 4″-deoxy-4″-epi-amino-avermectin B_{1b}; 4″-deoxy-4″-epi-amino avermectin B_{1a} (AB_{1a}); 4″-deoxy-4″-epi-(*N*-formyl-*N*-methyl)amino-avermectin (MFB_{1a}); and 4″-deoxy-4″-epi-(*N*-formyl)amino-avermectin B_{1a} (FAB_{1a}), in or on *Brassica* leafy vegetables (crop group 5) at 0.05 ppm; turnip greens at 0.05 ppm; cotton, undelinted seed at 0.025 ppm; cotton gin byproduct at 0.05 ppm; leafy vegetables (except *Brassica*) (crop group 4) at 0.10 ppm; fruiting vegetables (crop group 8) at 0.02 ppm; and tomato paste at 0.15 ppm. In addition, tolerances are established for indirect or inadvertent combined residues of emamectin (MAB_{1a} + MAB_{1b} isomers) and the associated 8,9-Z isomers (8,9-ZB_{1a} + 8,9-ZB_{1b}) in or on milk and fat of cattle, goats, hogs, horses, and sheep at 0.003 ppm; meat byproducts, except liver, of cattle, goats, hogs, horses, and sheep at 0.005 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.020 ppm; and meat of cattle, goat, hogs, horses, and sheep at 0.002 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by emamectin are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	Subchronic-Feeding-Rat MK–0243	Systemic Toxicity NOAEL=2.5 mg/kg/day. Systemic Toxicity LOAEL=5 mg/kg/day based on tremors, hindlimb splaying, urogenital staining, histological changes in brain and spinal cord, sciatic and optic nerves and skeletal muscles in males, emaciation, reduced body weight and reduced food consumption in both sexes.
870.3150	Subchronic-Feeding-Dog MK–0243	Systemic Toxicity NOAEL=0.25 mg/kg. Systemic Toxicity LOAEL=0.50 mg/kg based on microscopic pathological signs of neurotoxicity consisting of skeletal muscle atrophy and white matter multifocal degeneration in the brains of both sexes and white matter multifocal degeneration in the spinal cords of males.
870.3200	21–Day Dermal Toxicity-Rat	No Study Available.
870.3700	Developmental Toxicity-Rat MK–0243	Maternal Toxicity NOAEL=2 mg/kg/day. Maternal Toxicity LOAEL=4 mg/kg/day based on a significant trend towards decreased body weight gain during the dosing period. Developmental Toxicity NOAEL=4 mg/kg/day. Developmental Toxicity LOAEL=8 mg/kg/day based on altered growth and an increased incidence of supernumerary rib.
870.3700	Developmental Toxicity-Rabbit MK–0243	Maternal Toxicity NOAEL=3 mg/kg/day. Maternal Toxicity LOAEL=6 mg/kg/day based on a significant trend towards decreased body weight gain during dosing period and increased clinical signs (mydriasis and decreased pupillary reaction). Developmental Toxicity NOAEL=6 mg/kg/day. Developmental Toxicity LOAEL=Not Determined.
870.3800	Reproductive Toxicity-Rat MK–0244	Systemic Toxicity NOAEL=0.6 mg/kg/day. Systemic Toxicity LOAEL=1.8 mg/kg/day based on decreased body weight gain and histopathological changes (neuronal degeneration in the brain and spinal cord) in both sexes and generations. Reproductive Toxicity NOAEL=0.6 mg/kg/day. Reproductive Toxicity LOAEL=1.8 mg/kg/day based on decreased fecundity and fertility indices and clinical signs (tremors and hind limb extension) in offspring of both generations.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4100	Chronic-Feeding-Dog MK–0244	Systemic Toxicity NOAEL= 0.25 mg/kg/day. Systemic Toxicity LOAEL=0.5 mg/kg/day based on axonal degeneration in the pons, medulla and peripheral nerves (sciatic, sural, and tibial) in both sexes, clinical signs of neurotoxicity (whole body tremors, stiffness of the hind legs), spinal cord axonal degeneration, and muscle fiber degeneration in females.
870.4100	Chronic Feeding-Rat MK–0244	Systemic Toxicity NOAEL=1.0 mg/kg/day. Systemic Toxicity LOAEL=2.5 mg/kg/day, based on increased incidence of neuronal degeneration in the brain and spinal cord, decreased rearing, and an increased incidence of animals with low arousal.
870.4200	Carcinogenicity-Mouse (78–week) MK–0244	Systemic Toxicity NOAEL=2.5 mg/kg/day. Systemic Toxicity LOAEL=5.0 mg/kg/day for males and 7.5 mg/kg/day for females based on increased mortality, decreased weight gain, neurological signs, and increased incidence of severity of infections. There were no signs of carcinogenicity in this study.
870.4300	Chronic Toxicity/Carcinogenicity-Rat Emamectin	Systemic Toxicity NOAEL=1.0 mg/kg/day. Systemic Toxicity LOAEL=2.5/5.0 mg/kg/day based on marked neural degeneration in the brain and spinal cord of both sexes, brain white matter degeneration in males, and on decreased body weight, body weight gain, and food efficiency in males. There were no signs of carcinogenicity in this study. Note: The initial dose of the high dose group was 5.0 mg/kg/day. Due to unacceptable weight loss and/or tremors occurring at this dose in another concurrent study (TT#91–006–0) during week 9 in males and week 11 in females, the dose was lowered to 2.5 mg/kg/day starting at week 6 in males and week 10 in females.
870.5100	Gene Mutation - *Salmonella* MK–0243 and L–660,599; L–657,831; L–695,638; L–930,905 (photometabolites of MK–0244)	Negative for the induction of reverse gene mutation
870.5300	Gene Mutation in Cultured V–79 Chinese Hamster Lung Cells MK–0243	Negative for the induction of forward gene mutations in Chinese hamster lung fibroblast cells up to a severely cytotoxic nonactivated dose of 0.01mM or a severely cytotoxic S9-activated dose of 0.04mM.
870.5385	Structural Chromosome Aberration-*in vivo* mouse bone marrowMK–0244	Negative for the induction of chromosome aberrations in the bone marrow cells of male CD–1 mice.
870.5500	DNA Damage-Rat hepatocytes MK–0243	Negative for the induction of single strand breaks (SBs) in DNA of rat hepatocytes.
870.6200	Acute Oral Neurotoxicity -Rat MK–0243	A Neurotoxicity NOAEL was not established, since toxic signs of neurotoxicity as well as histological lesions in the brain, spinal cord and sciatic nerve occurred at all doses tested (27.4, 54.8 or 82.2 mg/kg)
870.6200	Subchronic Neurotoxicity-Rat MK–0243	Neurotoxicity NOAEL=1.0 mg/kg/day. LOAEL=5.0 mg/kg/day (highest dose tested) based on mild tremors, posture, rearing, excessive salivation, fur appearance, gait, strength, mobility and righting reflex.
870.6200	2–Week Dietary Neurotoxicity–CD–1 Mice MK–0243	Neurotoxicity NOAEL=2.0 mg/kg/day (highest dose tested). No characteristic neuronal lesions in the brain, spinal cord or sciatic nerve in mice of high dose group (2.0 mg/kg/day).
870.6200	15–day Dietary Neurotoxicity-CF–1 Mice MK–244	Neurotoxicity NOAEL=0.075 mg/kg/day. LOAEL=0.10 mg/kg/day based on tremors observed beginning on day 3, decreases in body weight and food consumption as well as degeneration of the sciatic nerve.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.6200	Dietary Neurotoxicity-CF–1 Mice L–660,599 Supplementary Study	Neurotoxicity NOAEL <0.1 mg/kg/day. One of the low-dose males had tremors, hunched posture and piloerection on day 14.
870.6300	Developmental Neurotoxicity-Rat MK–0244	Maternal Toxicity NOAEL=3.6/2.5 mg/kg/day (highest dose tested). Developmental Neurotoxicity NOAEL=0.10 mg/kg/day (lowest dose tested). The LOAEL is 0.60 mg/kg/day based on the dose-related decrease in open field motor activity in females at postnatal day 17.
870.7485	Metabolism-Rat MAB_{1a}	Radiolabeled MAB_{1a} benzoate is rapidly absorbed, distributed and excreted following oral and i.v. administration. The feces was the major route of excretion in oral and i.v. groups, while <1% of the administered dose was recovered in the urine 7 days post dosing. Tissue distribution and bioaccumulation appeared minimal. The metabolism of MAB_{1a} benzoate appears to involve primarily *N*-demethylation to AB_{1a}. AB_{1a} was the only metabolite detected in the feces while unmetabolized parent compound represented a large amount of the radioactivity.
870.7485	Bioequivalence-Dog MK–0243 solvate/monohydrate	The study demonstrated that MK–0243 benzoate MTBE solvate and MK–0243 benzoate monohydrate were bioequivalent in male dogs following oral administration as indicated by similar plasma levels for the two compounds.
870.7485	Bioequivalence-Dog MK–0243 benzoate/HCL salts	The study demonstrated that benzoate and HCl salts are bioequivalent after oral administration in male beagle dogs.
870.7600	Dermal Absorption-Rhesus Monkey MAB_{1a}, MK–244	Dermal Absorption was approximated at 1.79% of the administered dose.

Key: MK–0243 = hydrochloride (adduct) or salt of emamectin; MK–0244 = benzoic acid (adduct) or salt of emamectin.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

As explained below in Unit III.D.3, EPA determined that the special FQPA SF be reduced to 1x. However, EPA also determined that an additional 3x Modifying Uncertainty Factor (UF_M) is required for application of the endpoint (based on the 15–day mouse neurotoxicity study) to acute- and short-term scenarios, to account for the steepness of the dose-response curve and the severity of effects at the LOAEL (death and neuropathology). A 3x UF_M was judged to be adequate (as opposed to a 10X) because: (1) A NOAEL was established in this study; (2) although the effects of concern are seen after repeated dosing, the NOAEL here is used for a single exposure risk assessment; and (3) the most sensitive endpoint in the most sensitive species is selected. For intermediate- and chronic/long-term scenarios, EPA determined that a 10x UF_M is required to account for steepness of the dose-response curve, severity of effects at the LOAEL (death and neuropathology), and the use of a short-term study for long-term risk assessment.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic population adjusted dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of

departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for emamectin used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR EMAMECTIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (All populations)	NOAEL = 0.075 mg/kg/day UF = 300 Acute RfD = 0.00025 mg/kg/day	Special FQPA SF = 1 aPAD = acute RfD/ FQPA SF = 0.00025 mg/kg/day	15-day mouse LOAEL = 0.1 mg/kg/day based tremors on day 3 of dosing.
Chronic Dietary (All populations)	NOAEL= 0.075 mg/kg/day UF = 1,000 Chronic RfD = 0.000075 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.000075 mg/kg/day	15-day mouse LOAEL = 0.1 mg/kg/day based on moribund sacrifices, clinical signs of neurotoxicity, decreases in body weight and food consumption and histopathological lesions in the sciatic nerve.
Short-Term Incidental Oral (1–30 days)	Toxicological endpoints were not selected since there are no residential uses at the present time and thus no potential exposure via this scenario.		
Intermediate-Term Incidental Oral (1–6 months)	Toxicological endpoints were not selected since there are no residential uses at the present time and thus no potential exposure via this scenario		
Short-Term Dermal (1 to 30 days)	Oral study NOAEL= 0.075 mg/kg/day (dermal absorption rate = 1.8 %)	Occupational LOC for MOE = 300 Residential LOC for MOE: N/A	15–day mouse LOAEL = 0.1 mg/kg/day based on moribund sacrifices, clinical signs of neurotoxicity, decreases in body weight and food consumption and histopathological lesions in the sciatic nerve.
Intermediate-Term Dermal (1 to 6 months)	Oral study NOAEL= 0.075 mg/kg/day (dermal absorption rate = 1.8 %)	Occupational LOC for MOE = 1,000 Residential LOC for MOE: N/A	15–day mouse LOAEL = 0.1 mg/kg/day based on moribund sacrifices, clinical signs of neurotoxicity, decreases in body weight and food consumption and histopathological lesions in the sciatic nerve.
Long-Term Dermal (>6 months)	Long term dermal exposure is not expected and there are no residential uses at the present time. Therefore, quantification of risk is not required.		
Short-Term Inhalation (1 to 30 days)	Oral study NOAEL= 0.075 mg/kg/day (inhalation absorption rate = 100%)	Occupational LOC for MOE = 300 Residential LOC for MOE: N/A	15-day mouse LOAEL = 0.1 mg/kg/day based on moribund sacrifices, clinical signs of neurotoxicity, decreases in body weight and food consumption and histopathological lesions in the sciatic nerve.
Intermediate-Term Inhalation (1 to 6 months)	Oral study NOAEL= 0.075 mg/kg/day (inhalation absorption rate = 100%)	Occupational LOC for MOE = 1,000 Residential LOC for MOE: N/A	15–day mouse LOAEL = 0.1 mg/kg/day based on moribund sacrifices, clinical signs of neurotoxicity, decreases in body weight and food consumption and histopathological lesions in the sciatic nerve.
Long-Term Inhalation (>6 months)	Not required; long term occupational exposure is not expected and there are no residential uses at the present time. Therefore, quantification of risk is not required.		

*The reference to the special FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.505) for the combined residues of emamectin and its metabolites, in or on a variety of raw agricultural commodities and livestock. Tolerances range from 0.002 to 0.05. Risk assessments were conducted by EPA to assess dietary exposures from emamectin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A highly refined, Tier 3, acute dietary exposure assessment was conducted for the general U.S. population and various population subgroups. This was a probabilistic assessment using anticipated residue estimates from the

current and previously submitted field trial data as well as EPA percent crop treated (PCT) estimates for a number of commodities. PCT estimates used were 1% for cotton commodities; 52% for head lettuce; 2.5% for the subgroup 4A (leafy greens); 20% for the subgroup 4B (leaf petioles), the group 5 (*Brassica* leafy vegetables), and peppers; and 11% for tomatoes and its processing commodities. Anticipated residues were used for group 5 (*Brassica* leafy vegetables), group 4 (leafy vegetables (except *Brassica*)), and group 8 (fruiting vegetables). The calculation of anticipated residues for tomatoes (a representative commodity in group 8) used the following approach: For residues of MAB_{1a} and MAB_{1b} which were below the limit of detection (< LOD), calculation was based on the MAB_{1a} and MAB_{1b} ratio of 9:1; a residue value of 0.0005 ppm (½ LOD) for MAB_{1a} and a residue value of 0.000055 ppm (1/9 of the ½ LOD or 1/18 LOD) for MAB_{1b} was reported in the assessment. For residues of L'649 and (L'599 + L'831), a residue value of 0.0005 ppm (the ½ LOD) was reported if residues were below the limit of detection (<LOD). Anticipated residue levels of 0.0003 ppm for milk and skim milk, and 0.0009 ppm for cream were used. The recommended tolerance level residues were used for all other crops and meat products. Additionally, default DEEM® (version 7.76) concentration factors were used when necessary.

The acute dietary exposure estimates are below EPA's level of concern (< 100% aPAD) at the 99.9th exposure percentile for the general U.S. population (29% of the aPAD) and all other population subgroups. The most highly exposed population subgroup is children 3–5 years old, at 58% of the aPAD. The acute assessment was highly refined, however, inclusion of additional PCT data and modified concentration/processing factors could aid in further refining the acute dietary assessment.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For chronic exposure and risk assessment, an estimate of the residue level in each food or food-form (e.g., orange or orange juice) on the food commodity residue list is multiplied by the average daily consumption estimate for that food/food form. The resulting residue consumption estimate for each food/food-form is summed with the residue consumption estimates for all other food/food-forms on the commodity residue list to arrive at the total average estimated exposure. Exposure is expressed in mg/kg body weight/day and as a percent of the cPAD. This procedure is performed for each population subgroup. A somewhat refined Tier 2 chronic dietary exposure assessment was conducted for the general U.S. population and various population subgroups. The assumptions of the assessment were tolerance level residues for all commodities except milk (for which anticipated residue estimates were used), and PCT estimates for a number of commodities. PCT estimates used were 0.4% for cotton commodities; 26% for head lettuce; 1.5% for the subgroup 4A (leafy greens); 10% for the subgroup 4B (leaf petioles), the group 5 (*Brassica* leafy vegetables), and peppers; and 6% for tomatoes and its processing commodities. Anticipated residue levels of 0.0003 ppm for milk and skim milk, and 0.0009 ppm for cream were used. The recommended tolerance level residues were used for all other crops and meat products. Additionally, default DEEM® (version 7.76) concentration factors were used when necessary.

The chronic dietary exposure estimates are below HED's level of concern (<100% cPAD) for the general U.S. population (19% of the cPAD) and all population subgroups. The most highly exposed population subgroup is children 1–2 years old, at 34% of the cPAD. The chronic assessment was somewhat refined; inclusion of ARs, additional PCT information, and modified concentration/processing factors would further refine the chronic dietary assessment.

iii. *Cancer*. Emamectin is classified as a ''not likely'' human carcinogen based on the lack of evidence of carcinogenicity in male and female rats or male and female mice at doses that were judged to be adequate to assess the carcinogenic potential of the chemical.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as detailed above under Unit III.C.1.i and III.C.1.ii Different PCTs and anticipated residues were used for the acute versus the chronic dietary risk from food and feed uses as explained in these units.

The Agency believes that the three conditions listed in Unit III.C.1.iv have been met. With respect to Condition 1, PCT estimates for existing registrations are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. For new uses, PCT

estimates are based on the use of existing alternative insecticides against insects that emmamectin will control. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which emamectin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for emamectin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of emamectin.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to emamectin they are further discussed in the aggregate risk Unit III.E.

Refined (Tier II) surface water concentrations were developed for emamectin and its metabolites with the PRZM/EXAMS model, using an index reservoir scenario for the aerial and ground applications of emamectin on cotton. The model assumes that emamectin is applied at the maximum label rate (0.015 lb active ingredient/acre with a maximum of 0.09 lb active ingredient/acre/season for the dispersable granule; and 0.016 lb active ingredient/acre with a maximum of 0.064 lb active ingredient/acre/season for the emulsifiable concentrate). The results indicate that emamectin and its metabolites have a very low potential to reach surface waters as dissolved species. However, emamectin does have the potential to reach surface water bodies through erosion of soil particles to which the compound is sorbed. One percent of the application rate is assumed to drift from the application site during ground application. For the additional proposed aerial application, 5% of the application rate is assumed to drift from the application site to water bodies.

Surface water and ground water EECs are based on the PRZM/EXAMS and SCI-GROW models respectively. The EECs of emamectin for acute exposure are estimated to be 0.298 parts per billion (ppb) for surface water from aerial application and 0.293 ppb for surface water from ground application. The EEC for chronic exposure is estimated to be 0.080 ppb for surface water. Ground water EECs are based on the Tier I SCI-GROW model. The EEC of emamectin for both acute and chronic exposure is estimated to be 0.006 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this preamble to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Emamectin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether emamectin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, emamectin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that emamectin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. EPA concludedthat there is low concern, and no residual uncertainty, for pre- and/or postnatal toxicity resulting from exposure to emamectin, based on the following:

i. There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure in developmental studies. There is no quantitative evidence of increased susceptibility of rat offspring in the two generation reproduction study, however, an increase in qualitative susceptibility was determined. EPA determined that the concern is low because:

(a) There was a clear NOAEL for offspring toxicity.

(b) Effects unique to offspring (decreased fertility in F_1 adults, and clinical signs (tremors and hind limb extensions during and following lactation)) were seen at the same dose that caused parental systemic toxicity (decreased body weight gain and histopathological lesions in the brain and spinal cord).

(c) The decreased fertility seen in F_1 adults may have been due to histopathological lesions in the brain and central nervous system (seen in both F_0 and F_1 generations), rather than due to a direct effect on the reproductive system.

ii. There is evidence of increased qualitative and quantitative susceptibility in the rat developmental neurotoxicity study, but EPA determined that the concern is low because: Although multiple offsping effects (including decreased pup body weight, head and body tremors, hind limb extension and splay, changes in motor activity and auditory startle) were seen at the highest dose, and no maternal effects were seen at any dose, there was a clear NOAEL for offspring toxicity at the low dose, and the offspring LOAEL (at the mid dose) is based on a single effect seen on only one day (decreased motor activity on PND 17) and no other offspring toxicity was seen at the LOAEL.

3. *Conclusion*. EPA concluded that the toxicology database was complete for FQPA purposes and that there are no residual uncertainties for pre-/post-natal toxicity. Based on the quality of the data, EPA determined that the special FQPA SF should be reduced to 1x. However, as explained in Unit III.3.B. of this preamble, EPA determined that an additional 3x or 10x modifying uncertainty factor should be used for short-term or intermediate-term exposure, respectively. The recommendation for the 1x FQPA SF is based on the following:

- The toxicological database is complete for FQPA assessment.
- The acute dietary food exposure assessment utilizes anticipated residue estimates based on carefully reviewed field trial data and PCT data verified by EPA for several commodities (100% crop treated was assumed for remaining commodities). By using the 99.9th percentile exposure values for comparison to the aPAD, actual risks are not likely to be underestimated.
- The chronic dietary food exposure assessment utilizes tolerance level residue estimates and PCT data verified by EPA for several commodities (100% crop treated was assumed for remaining commodities). This assessment is somewhat refined and based on reliable data that is not likely to underestimate exposure/risk.
- The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.
- There are no proposed or existing residential uses for emamectin.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure (at the 99.9th percentile) from food to emamectin will occupy 29% of the aPAD for the U.S. population, 23% of the aPAD for females 13 years and older, 51% of the aPAD for all infants (<1 year old) and 58% of the aPAD for children 3–5 years old. In addition, there is potential for acute dietary exposure to emamectin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO EMAMECTIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.00025	29	0.298	0.006	6.2
All infants (< 1 year old)	0.00025	51	0.298	0.006	1.2
Children (1–2 years old)	0.00025	50	0.298	0.006	1.3
Children (3–5 years old)	0.00025	58	0.298	0.006	1.0
Children (6–12 years old)	0.00025	36	0.298	0.006	1.6
Youth (13–19 years old)	0.00025	27	0.298	0.006	6.4
Adults (20–49 years old)	0.00025	20	0.298	0.006	7.0
Females (13–49 years old)	0.00025	23	0.298	0.006	5.8
Adults (50+ years old)	0.00025	22	0.298	0.006	6.9

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to emamectin from food will utilize 19% of the cPAD for the U.S. population, 17% of the cPAD for females 13 years and older, 9% of the cPAD for all infants (<1 year old) and 34% of the cPAD for children 1–2 years old. There are no residential uses for emamectin that result in chronic residential exposure to emamectin. In addition, there is potential for chronic dietary exposure to emamectin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO EMAMECTIN

Population Subgroup	cPAD (mg/kg)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.000075	19	0.080	0.006	2.1
All infants (< 1 year old)	0.000075	9	0.080	0.006	0.68
Children (1–2 years old)	0.000075	34	0.080	0.006	0.49
Children (3–5 years old)	0.000075	31	0.080	0.006	0.52
Children (6–12 years old)	0.000075	23	0.080	0.006	0.58
Youth (13–19 years old)	0.000075	17	0.080	0.006	2.2
Adults (20–49 years old)	0.000075	17	0.080	0.006	2.2
Females (13–49 years old)	0.000075	17	0.080	0.006	1.9
Adults (50+ years old)	0.000075	16	0.080	0.006	2.2

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Emamectin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Emamectin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Emamectin is classified as a ''not likely'' human carcinogen based on the lack of evidence of carcinogenicity in male and female rats or male and female mice at doses that were judged to be adequate to assess the carcinogenic potential of the chemical. Therefore, EPA does not expect it to pose a cancer risk. As a result, a quantitative cancer dietary exposure analysis was not performed.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to emamectin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An analytical method (HPLC-fluorescence) for the enforcement of tolerances for residues of emamectin and its metabolites in/on plant commodities has been validated by EPA

and submitted to the FDA for inclusion in the Pesticide Analytical Manual (PAM) Vol. II. In addition, an analytical method (HPLC-fluorescence) for the enforcement of tolerances for residues of emamectin and its metabolites in/on ruminant commodities has been submitted to EPA for review. The ruminant method has been validated by an independent laboratory but EPA validation is required as a condition of registration.

B. International Residue Limits

There are currently no Codex, Canadian, or Mexican maximum residue limits on emamectin or its metabolites.

C. Conditions

The following studies must be submitted as conditions for product registrations related to these tolerances: A storage stability study for cotton seed, gin byproducts, and processed commodities which reflect the storage intervals and conditions of the submitted field trial and processing studies; additional storage stability studies to support 19 month storage intervals for bell pepper and tomatoes; a new tomato processing study with tomatoes treated at an exaggerated rate (up to 5x the maximum proposed seasonal application rate); three additional spinach field trials conducted in Regions X, VI, and II (one study each) based on OPPTS Guidelines 860.1500; and a 28–day inhalation study using the CF–1 mouse. In addition, a successful method validation by EPA is required for the high performance liquid chromatography-fluorescence method submitted for residues in ruminant commodities; the registrant is required to make any necessary modifications resulting from the EPA method review.

V. Conclusion

Therefore, the tolerance is established for combined residues of emamectin, (a mixture of a minimum of 90% 4″-epi-methylamino-4″-deoxyavermectin B_{1a} and maximum of 10% 4″-epi-methylamino-4″-deoxyavermectin B_{1b}) and its metabolites 8,9-isomer of the B_{1a} and B_{1b} component of the parent (8,9-ZMA), or 4″-deoxy-4″-epi-amino-avermectin B_{1a} and 4″-deoxy-4″-epi-amino-avermectin B_{1b}; 4″-deoxy-4″-epi-amino avermectin B_{1a} (AB_{1a}); 4″-deoxy-4″-epi-(*N*-formyl-*N*-methyl)amino-avermectin (MFB_{1a}); and 4″-deoxy-4″-epi-(*N*-formyl)amino-avermectin B_{1a} (FAB_{1a}), in or on *Brassica* leafy vegetables (crop group 5) at 0.05 ppm; turnip greens at 0.05 ppm; cotton, undelinted seed at 0.025 ppm; cotton gin byproduct at 0.05 ppm; leafy vegetables (except *Brassica*) (crop group 4) at 0.10 ppm; fruiting vegetables (crop group 8) at 0.02 ppm; and tomato paste at 0.15 ppm. In addition, tolerances are established for indirect or inadvertent combined residues of emamectin (MAB_{1a} + MAB_{1b} isomers) and the associated 8,9-Z isomers (8,9-ZB_{1a} + 8,9-ZB_{1b}) in or on milk and fat of cattle, goats, hogs, horses, and sheep at 0.003 ppm; meat byproducts, except liver, of cattle, goats, hogs, horses , and sheep at 0.005 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.020 ppm; and meat of cattle, goat, hogs, horses, and sheep at 0.002 ppm. Note that the tolerance expression in 40 CFR 180.505 is being changed from emamectin benzoate to emamectin since the enforcement method, Method 244–92–3, Revision 1, analyzes residues of emamectin MAB_1 isomers (not emamectin benzoate), 8,9-ZMA, AB_{1a}, MFB_{1a}, and FAB_{1a} in/on crops.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0220 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 8, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request

with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0220, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 30, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.505 is revised to read as follows:

§ 180.505 Emamectin; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of emamectin, (a mixture of a minimum of 90% 4″-epi-methylamino-4″-deoxyavermectin B_{1a} and maximum of 10% 4″-epi-methylamino-4″-deoxyavermectin B_{1b}) and its metabolites 8,9-isomer of the B_{1a} and B_{1b} component of the parent (8,9-ZMA), or 4″-deoxy-4″-epi-amino-avermectin B_{1a} and 4″-deoxy-4″-epi-amino-avermectin B_{1b}; 4″-deoxy-4″-epi-amino avermectin B_{1a} (AB_{1a}); 4″-deoxy-4″-epi-(*N*-formyl-*N*-methyl)amino-avermectin (MFB_{1a}); and 4″-deoxy-4″-epi-(*N*-formyl)amino-avermectin B_{1a} (FAB_{1a}), in or on the following commodities:

Commodity	Parts per million
Cotton, gin byproduct	0.050
Cotton, undelinted seed	0.025
Tomato, paste	0.150
Turnip, greens	0.050
Vegetable, *Brassica*, leafy, group 5	0.050
Vegetable, fruiting, group 8	0.020
Vegetable, leafy, except *Brassica*, group 4	0.100

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect and inadvertant residues.* Tolerances are established for indirect or inadvertent combined residues of emamectin (MAB_{1a} + MAB_{1b} isomers) and the associated 8,9-Z isomers (8,9-ZB_{1a} + 8,9-ZB_{1b}) in or on the following commodities when present therein as a result of the application of emamectin to crops listed in the table to paragraph (a) of this section:

Commodity	Parts per million
Cattle, fat	0.003
Cattle, liver	0.020
Cattle, meat	0.002
Cattle, meat byproducts (except liver)	0.005
Cattle, milk	0.003
Goats, fat	0.003
Goats, liver	0.020
Goats, meat	0.002
Goats, meat byproducts (except liver)	0.005
Goats, milk	0.003
Hogs, fat	0.003
Hogs, liver	0.020
Hogs, meat	0.002
Hogs, meat byproducts (except liver)	0.005
Hogs, milk	0.003
Horses, fat	0.003
Horses, liver	0.020
Horses, meat	0.002
Horses, meat byproducts (except liver)	0.005
Horses, milk	0.003
Sheep, fat	0.003
Sheep, liver	0.020
Sheep, meat	0.002
Sheep, meat byproducts (except liver)	0.005
Sheep, milk	0.003

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0134; FRL–7303–6]

Diallyl Sulfides; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of diallyl sulfides (DADs) in/on garlic, leeks, onions, and shallots. Platte Chemical Company submitted a petition to EPA under section 408(d)(1)(B) of the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of DADs in/on garlic, leeks, onions, and shallots.

DATES: This regulation is effective July 9, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0134, must be received on or before September 8, 2003.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: By mail: Driss Benmhend, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *Benmhend.driss@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0134. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://*

www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of November 21, 2001 (66 FR 58481) (FRL–6802–2), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1F6316) by Platte Chemical Company, 419 18th Street, Greeley, CO 80632. As required by section 408(d)(2)(A)(i)(I), this notice included a summary of the petition prepared by the petitioner Platte Chemical Company. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of diallyl sulfides.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) requires that the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

DADs are a composition of diallyl sulfides that includes diallyl monosulfide, diallyl disulfide, diallyl trisulfide, and diallyl pentasulfide. They are naturally occurring compounds found in *Allium* crops, including onion and garlic and are partially responsible for the distinctive odor of garlic. The end-use product, Alli-Up is proposed for use as a soil fumigant solution for the control of white rot (*Sclerotium cepivorum*) in garlic, leeks, onions, and shallots. It contains 90% of DADs in a liquid formulation (8.3 lbs of active ingredient per gallon). Application is recommended for any field that shows evidence or has a history of white rot infestations. When applied to infected soils in conjunction with a rotational crop, DADs will mimic the presence of an *Allium* crop, which will in turn stimulate the germination of white rot spores (*sclerotia*). The germinated spores will subsequently perish since no host crop is present. The product is applied through conventional soil fumigation equipment such as an enclosed shanking system.

Toxicity studies submitted in support of the tolerance exemption petition, and the Agency reviews are compiled in the public docket established for this action under the docket ID number OPP–2003–0134.

1. *Acute oral toxicity (OPPTS Harmonized Guideline 870.1100; 152–10; Master Record Identification Number (MRID) 45422907).* Five male and 5 female rats were dosed with 200, 600, and 1,000 milligram/kilogram (mg/kg) and 10 of each were dosed with 5,000 mg/kg. The acute oral LD_{50} was determined at 346 mg/kg. Treated rats displayed a number of abnormalities including breathing abnormalities, wobbly gait, decreased defecation, decreased activity, and pilo-erection. The abnormalities are attributed to hemolytic anemia as it is experienced by rodents when feeding on materials rich on sulfur and derived from onion and garlic.

2. *Acute dermal toxicity (OPPTS Harmonized Guideline 870.1200; 152–11; MRID 45422908).* Five male and 5 female rats were dosed with 1,500, 1,750, and 2,000 mg/kg, observed daily and weighed weekly. The acute dermal LD_{50} of DADs in male rats was determined to be 1,826 mg/kg, in female 2,009 mg/kg, and in sexes combined 1,967 mg/kg, or a Toxicity Category II.

3. *Primary eye irritation (OPPTS Harmonized Guideline 870.2400; 152–13; MRID 45422909).* Six rabbits were administered DADs in the right eye with the left eye serving as an untreated control. Exposure of the test article produced corneal opacity in 3/6 test eyes at the 1 or 24–hour scoring interval. Conjunctivitis was noted in 6/6 test eyes at the 1–hour testing interval. The conjunctival irritation resolved completely in all animals by study day 14. Under the conditions of the test, DADs are considered a moderate eye irritant, and Toxicity Category III for eye irritation.

4. *Primary dermal irritation (OPPTS Harmonized Guideline 870.2500; 152–14; MRID 45422910).* These compound are Toxicity Category II for dermal irritation. Severe skin reactions of the rabbits exposed, with evident erythema grade 2 and 1 at 1 hour post-exposure were observed.

5. *Dermal sensitization (OPPTS Harmonized Guideline 870.2600; 152–15; MRID 45422911).* A dermal sensitization potential test for DADs was evaluated using guinea pigs. DADs were found to be contact dermal sensitizers in guinea pigs, in accordance with the Buehler test.

6. *Mutagenicity (OPPTS Harmonized Guideline 870.5195; MRID 45422912).* A *Salmonella*/mammalian-microsome reverse mutation assay (Ames Test) was done using DADs. The assay evaluated the test article for its ability to induce reverse mutations at the histidine locus in the genome of specific *Salmonella typhimurium* tester strains in both the presence and absence of an exogenous metabolic activation system of mammalian microsomal enzymes derived from Arocolr™ induced rat liver. The results of the assay indicate that under the conditions of the study, DADs did not cause a positive increase in the number of histidine revertants per

plate of any of the tester strains either in the presence or absence of the microsomal enzymes prepared from the Arocolr™ induced rat liver (S9). As a result, Diallyl disulfide, the main component of DADs, are not considered mutagenics.

Data Waivers were requested for the following studies:

Acute inhalation toxicity (OPPTS Harmonized Guideline 870.1300; 152–12).

Mammalian mutagenicity tests (OPPTS Harmonized Guideline 870.5195) except for an Ames test.

90–Day feeding (1 species) (OPPTS Harmonized Guideline 870.3100).

90–Day dermal (1 species) (OPPTS Harmonized Guideline 870.3250).

90–Day inhalation (1 species) (OPPTS Harmonized Guideline 870.3465).

Teratogenicity (1 species) (OPPTS Harmonized Guideline 870.3700).

Chronic exposure (OPPTS Harmonized Guideline 870.4100) (Tier III)

Oncogenicity (OPPTS Harmonized Guideline 870.4200) (Tier III)

DADs are naturally present in garlic and other *Allium* crops and in fields planted with these crops. In spite of the long history of garlic consumption and exposure to DADs by humans, no immunotoxic effects, such as induced dysfunction or inappropriate suppressive or stimulatory responses in components of the immune system of humans or test animals have been reported and are not expected from the exposure to DADs. As a result, the waiver requests listed above were approved.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

The product Alli-Up containing DADs is intended for agricultural use as a soil fumigant for the purpose of suppression of onion white rot (*Sclerotia cepivorum*). The presence of DADs in the soil will stimulate the pathogen to become active and seek out its host, an *Allium* sp., which is not present. The pathogen will then perish. DADs in the soil are then subject to microbial breakdown and adsorption to soil particles. By the time the soil is prepared and ready for a new crop, most DADs have already dissipated. As a result, when new crops are planted, the likelihood of DADs residue present in the mature crop is considered low.

1. *Food*. From food and feed uses. As explained above, the presence of DADs residue in food is unlikely. Moreover, the primary source for human exposure to DADs would occur through the consumption of garlic, other *Allium* crops or garlic derived products. There have been no reports of adverse reactions to humans resulting from the consumption of *Allium* crops and derived products. The over-all toxicology profile of DADs suggests that the risk associated with acute exposures by the oral route would be low.

2. *Drinking water exposure*. Since Alli-Up will only be used as a soil fumigant, there is little if any, potential for drinking water exposure from pesticide drift in the surface water. Moreover, DADs in the soil are then subject to microbial breakdown and adsorption to soil particles and dissipation in the air. Therefore, the level of residues that might get into the ground water or surface water would most likely be negligible.

B. Other Non-Occupational Exposure

The potential for non-dietary exposure to DADs for the general population is unlikely because potential use sites are commercial agricultural. Since the material is shanked into the treated soil during commercial applications, any odor present would be similar to that of a commercial garlic field or to that arising from freshly cut or pressed garlic as found in a typical household kitchen. EPA is unaware of any reports of adverse reactions to humans resulting from *Allium* crops and derived products odor or consumption.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether DADs have a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, DADs do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that DADs have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

VII. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. Based on the lack of observed developmental toxicity, EPA has concluded there is reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to DADs residues. Exemption of DADs from the requirements of a tolerance should pose no significant risk to humans or the environment.

3. *Conclusion*. There is reasonable certainty that no harm will result from aggregate exposure to residues of diallyl sulfides to the U.S. population. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the low levels of toxicity, the long history of safe consumption of garlic and onions which naturally contain diallyl sulfides, and the lack of exposure. Levels of exposure resulting from use of diallyl sulfides would be significantly lower than those found in the U.S. population's consumption of onion and garlic foods (raw, cooked and processed). Moreover, the Agency concludes that diallyl sulfides is non-toxic to humans, including infants and children. Thus, there is no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns,

special susceptibility, and cumulative effects do not apply. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of diallyl sulfides.

VIII. Determination of Safety

Based on the preceding assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to DAD residues.

IX. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408 of the FFDCA to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been developed, DADs may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

Based on available data, no endocrine system-related effects have been identified with consumption of DADs. In addition, DADs do not share any structural similarity to any known endocrine disruptive chemical.

B. Analytical Method

EPA is establishing an exemption from the requirement of a tolerance for the reasons stated above. Because a tolerance exemption does not establish numerical limit for the amount of the pesticide chemical residues that may be present, and for the reasons stated above that led the Agency to conclude that a tolerance exemption was warranted, the Agency has concluded that an analytical method is not necessary for enforcement purposes for DADs.

C. Codex Maximum Residue Level

No Codex maximum residue levels are established for residues of DADs in or on any food or feed crop. There are no established tolerances or exemptions from tolerance for DADs in the United States. The Agency has classified DADs as a biochemical pesticide.

X. Conclusions

Based on the toxicology data submitted, there is reasonable certainty no harm will result from aggregate exposure of residues of DADs to the U.S. population, including infants and children, This includes all anticipated dietary exposures and all other exposures for which reliable data were submitted, accepted and reviewed. The Agency has no reports of adverse reactions of humans resulting from *Allium* crops and derived products' odor or consumption. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA section 408(c) and (d) for residues of DADs in or on garlic, leeks, onions, and shallots.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0134 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 8, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2003–0134, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule '' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 13, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.1228 is added to subpart D to read as follows:

§ 180.1228 Diallyl sulfides; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of diallyl sulfides when used in/on garlic, leeks, onions, and shallots.

[FR Doc. 03–17106 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030514123–3162–02; I.D. 041003B]

RIN 0648–AQ76

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 38 to the Northeast Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 38 (Framework 38) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to exempt a fishery from the Gulf of Maine (GOM) Regulated Mesh Area mesh size regulations. Framework 38 establishes an exempted small mesh silver hake (*Merluccius bilinearis*) (whiting) fishery in the inshore GOM. The exempted fishery is authorized from July 1 through November 30 each year; requires the use of specific exempted grate raised footrope trawl gear; establishes a maximum whiting possession limit of 7,500 lb (3,402 kg); and includes incidental catch restrictions.

DATES: This regulation is effective July 9, 2003.

ADDRESSES: Copies of the Framework 38 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the Environmental Assessment and other supporting documents for the framework adjustment are available from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION: This final rule implements measures contained in Framework 38 to the FMP. Details concerning the justification for and development of Framework 38 and the implementing regulations were provided in the preamble to the proposed rule (68 FR 27774, May 21, 2003) and are not repeated here.

Exempted Grate Raised Footrope Trawl Fishery Area

The Exempted Grate Raised Footrope Trawl Fishery Area is an inshore area in the GOM extending to the Loran 44500 line and northward along the coast of Maine. This area most closely represents the historical whiting fishery and the area utilized by the fishermen who participated in the experimental whiting grate fisheries between 1996 and 2002. During the development of this framework adjustment, the Council considered three options for the fishery area, including the area option implemented by this final rule. The first option was the largest area under consideration and included an offshore component to the area implemented. Another option was the smallest area under consideration and represented a subset of the area implemented, where past experimental fishing was concentrated. The area implemented was selected by the Council, following an endorsement by the Plan Development Team (PDT), even though sampling was not conducted throughout the entire area. The area was selected because there were sufficient similarities (species composition, hydrography, habitat, current flow, bottom topography) between it and the subset where the experiment occurred to suggest that bycatch in the area implemented may be similar to that observed in the experiments. Thus, the rate of capture of regulated species is not expected to differ over the area implemented.

Fishing Season

The season for the GOM Grate Raised Footrope Trawl Fishery is July 1-November 30. This period encompasses the traditional seasonal presence of whiting along the coast of Maine in the GOM and the period of documented catch and bycatch during research trials and experimental small mesh fisheries permitted by NMFS between 1996 and 2002. The PDT expressed support for a season from July 1 to November 30, based on documented catch rates and experimental data from 2001 and 2002, which were reviewed by the PDT in detail.

During the development of this framework adjustment, the Council considered establishing a season for this fishery from June 1 to November 30, but ultimately decided to eliminate the month of June from consideration after evaluating the data. These data show that the coastal whiting fishery started in July and ended in November.

The majority of experimental tows with the proposed sweepless trawl were conducted during October and November 2001 and 2002. Past experience demonstrates that the catches of whiting are generally lower and the bycatch of regulated species is relatively higher during these months than during the summer. Given that the 2001 and 2002 data for the proposed sweepless trawl show low absolute bycatch of regulated species during October and November, the gear is expected to fish with even lower bycatch during the summer.

Gear Specifications

There are several gear specifications for this fishery, including net specifications for the raised footrope trawl, that are consistent with those in the Cape Cod Bay whiting fishery, a requirement to use a sweepless trawl, and a requirement to use a Nordmore-style grate with a maximum bar spacing of 50 mm (1.97 inches). There is also a minimum codend mesh requirement of 2.5 inches (6.35 cm) (square or diamond mesh). Vessels may use net strengtheners in this fishery, provided that they are consistent with the existing net strengthener provisions for 2.5 inch (6.35 cm) mesh.

Whiting/Offshore Hake Possession Limit

There is a maximum whiting/offshore hake possession limit of 7,500 lb (3,402 kg) for this fishery. Vessels using mesh larger than the minimum 2.5 inches

(6.35 cm) may not possess more than 7,500 lb (3,402 kg) of whiting/offshore hake.

Incidental Catch Restrictions

Incidental catch restrictions ensure that the net is fished properly and remains off the ocean bottom. The incidental catch restrictions mirror those incorporated into the Cape Cod Bay raised footrope trawl fishery, with the addition of a prohibition on the possession of dogfish. Vessels participating in the GOM Grate Raised Footrope Trawl Fishery may retain red hake, squid, butterfish, mackerel, alewife, and herring up to the amounts allowed by the regulations for those species, provided they comply with all regulations for those species. The following additional restrictions apply: A prohibition on the possession of regulated species (Atlantic cod, witch flounder, American plaice, yellowtail flounder, winter flounder, windowpane flounder, haddock, pollock, redfish, and white hake), monkfish, lobsters, skates, crabs, longhorn sculpin, sea raven, summer flounder (fluke), ocean pout, and spiny dogfish.

The prohibition on the possession of monkfish, lobsters, and skates help to ensure that fishermen rig the net correctly, so that the footrope is not in contact with the sea floor and thus, much less likely to catch these species. The prohibition on crabs, longhorn sculpin, sea raven and dogfish is designed to reduce the damage to whiting, a soft bodied fish, from abrasion and puncture, as well as to encourage keeping the footrope off the sea floor. Except for a few juveniles, very few dogfish are retained by the grate raised footrope trawl net, as they are too large to pass through the grate.

Annual Review

The PDT will annually review sea sampling data from the fishery and develop recommendations, as necessary, to ensure that groundfish bycatch remains at a minimum. Because this is a seasonal fishery, the Council may modify the specifications for this fishery through a framework adjustment to the FMP prior to the next season, if the PDT recommends adjustments to address regulated species bycatch.

The Council desires 10–percent observer coverage in this fishery. No later than 2006, NMFS, in consultation with the PDT, will determine if the level of observer coverage is sufficient to monitor catch and bycatch in this fishery with an acceptable level of precision. If practicable, the level of desired observer coverage will be adjusted (increased or decreased) consistent with that analysis. The PDT may recommend adjustments to the level of observer coverage prior to 2006, based on information examined during the annual review described above.

Comments and Responses

During the comment period, which ended June 5, 2003, one written comment on the proposed rule was received from the Maine Department of Marine Resources (ME DMR).

Comment: The ME DMR strongly supports the measures in the proposed rule to implement Framework 38, is committed to limited monitoring of this whiting fishery, and requested that NMFS also provide resources to assist in monitoring.

Response: NMFS concurs with the ME DMR's support of the management measures in Framework 38, and acknowledges the ME DMR's commitment to monitoring and request for monitoring assistance.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated.

Summary of Significant Issues Raised in Public Comments

One comment was received during the comment period on the proposed rule, although it did not pertain to the IRFA. No significant issues were raised and, therefore, no changes to the proposed rule were required to be made as a result of public comments.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

According to the Small Business Administration standards, any fish harvesting or hatchery business is a small business if it is independently owned and operated and not dominant in its field of operations and if it has annual receipts of not in excess of $3.5 million. Approximately 50 vessels are expected to participate in this exempted fishery. All of these vessels meet the criteria for ''small entities'' and therefore, all alternatives and analyses contained in Framework 38 necessarily reflect impacts on small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Framework 38 does not contain any new recordkeeping, reporting, or compliance requirements.

Steps Taken to Minimize Economic Impacts on Small Entities

The Council prepared an economic analysis that describes the economic impact that this rule will have on small entities. A summary of the analysis follows:

The Council considered the no action alternative—not establishing an exempted grate raised footrope trawl fishery. Implementation of the no action alternative would preclude fishermen from engaging in the small mesh silver hake fishery in the inshore GOM. This would result in lost opportunities to harvest whiting, and therefore, fishermen would be unable to earn additional revenue from this fishery (i.e., upwards of $1 million per year).

Slight variations to the action being implemented were considered by the Council as follows: Beginning the season in June; increasing the size of the exemption area; less restrictive gear restrictions or less restrictive incidental catch allowances. Several of these options (larger area, longer season) may have resulted in increased economic benefits to the participants compared with the action selected. However, there was sufficient uncertainty regarding bycatch rates of regulated multispecies associated with these options, and the Council considered the risk to associated bycatch species (particularly regulated multispecies) to be too great to warrant implementation of these options. Furthermore, the dissimilarities between the inshore area (Options 2A and 2B), specifically, differences in depth, temperature, bottom type, and community composition, caused the Council to conclude that they could not reasonably extrapolate the results of the experiment to the offshore component (Option 1). The uncertainty resulted from the lack of experimental data in the largest area and during the month of June. Because the experiment had not been conducted in the largest area, there were no data to support a decision to allow an exempted fishery in the area outside of the proposed area. Similarly, there were no experimental data during the month of June, but data from May

indicated significantly higher bycatch rates than during the proposed season. Due to a lack of data on bycatch rates during the month of June and from the largest area, the exemption could not be justified. Therefore, the Council made a precautionary decision to constrain the exempted fishery to the season and area in which experimental data demonstrated low bycatch rates.

The economic effects resulting from the exempted grate raised footrope trawl fishery are not expected to be significant to the economy as a whole or to the fishing industry in general. The retrospective analysis included in the Framework 38 document indicates that there would be approximately 50 vessels expected to participate in this exemption fishery and they are expected to share in a possible $1 million increase in revenue (an additional $20,000 in annual revenue per participating vessel). Analyses included in the Framework 38 document indicate that the initial fishery using the grate raised footrope trawl would not be expected to expand quickly, but will allow bait fishing activities to occur and will likely result in activity levels similar to those that occurred in 1996. Given that the conditions under which the grate raised footrope trawl exemption fishery may be conducted (gear, area, season, etc.) are almost identical to the conditions under which the experimental fishery was operated, it is expected that a similar number of vessels, with similar characteristics (size, tonnage, homeport) as those that participated in the experimental fisheries and described in detail in the Framework 38 document, will participate in and benefit from this exemption fishery. The economic benefits, although not significant overall (approximately $1 million to the fishery as a whole), will be important to participating vessels (approximately $20,000 in increased annual revenue), especially those along the coast of Maine and in smaller ports adjacent to the Gulf of Maine.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the NE multispecies fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

Pursuant to 5 U.S.C. Section 553 (d)(1), the Assistant Administrator for Fisheries, NOAA, (AA) waives the 30–day delayed effectiveness period of the implementing regulations. Currently, the minimum mesh size and possession limit restrictions implemented under the Northeast Multispecies FMP prevent this fishery from occurring. Although these measures impose new regulations on participants in the GOM whiting grate raised footrope trawl fishery, the overall program to implement the exemption fishery relieves existing restrictions that prevent the fishery from occurring without these measures. Specifically, this fishery has been operating for the past several years on an experimental basis. This action will benefit the silver hake resource by allowing fishermen to target an abundant stock (whiting), thereby reducing the need to target less abundant and less stable stocks (Gulf of Maine cod). This rule relieves the restrictions that would otherwise prevent the exempted fishery from occurring. Any additional restrictions implemented through this rule are necessary constraints placed on the exemption fishery to protect the resource from overharvest and to ensure that compliance with the regulations governing the exemption fishery can be adequately monitored and enforced. Overall, this rule has a beneficial impact on the fishing industry by providing an opportunity to fish for whiting off the coast of Maine. Because there is no longer an experimental fishery, there is a need to implement these regulations in order to allow fishers to participate in the small mesh silver hake exempted fishery, currently off-limits because of existing restrictions.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: July 2, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.80, paragraph (a)(16) is redesignated as paragraph (a)(17) and a new paragraph (a)(16) is added to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(July 1 through November 30)

Point	N. Lat.	W. Long.
GRF1	43°15′	70°35.4′.
GRF2	43°15′	70°00′.
GRF3	43°25.2′	70°00′.
GRF4	43°41.8′	69°20′.
GRF5	44°58.5′	69°20′.

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5 inch (6.35 cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake; butterfish; herring; mackerel; squid; and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications*. In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) of this section apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of 3/8–inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review*. On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next season through the framework adjustment process specified in § 648.90(b), and in accordance with the Administrative Procedures Act.

* * * * *

[FR Doc. 03–17320 Filed 7–3–03; 11:00 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 070203A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–2778.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific ocean perch for the Western Regulatory Area was established as 2,700 metric tons (mt) by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for Pacific ocean perch in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,500 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for Pacific ocean perch in the Western Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 2, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–17236 Filed 7–2–03; 3:48 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307 3037–02; I.D. 070203B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 5, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific ocean perch for the Eastern Aleutian District was established as 3,238 metric tons (mt) by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for Pacific ocean perch in the Eastern Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,938 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for Pacific ocean perch in the Eastern Aleutian District, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 2, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–17237 Filed 7–2–03; 3:48 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030128023–3158–02; I.D. 011503D]

RIN 0648–AQ44

Fisheries of the Exclusive Economic Zone Off Alaska; Increase in Roe Retention Limit for Pollock Harvested in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule increases from 7 to 9 percent the percentage of pollock roe that may be retained by operators of catcher/processors and motherships processing pollock harvested in the Bering Sea and Aleutian Islands Management Area. This action is necessary because catcher/processors and motherships have been able to increase their pollock roe recovery rate since the passage of the American Fisheries Act (AFA) through cooperative fishing practices and more precise timing of fishing activity. This action is intended to be consistent with the environmental and socioeconomic objectives of the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act) and other applicable laws.

DATES: Effective August 8, 2003.

ADDRESSES: Copies of the Categorical Exclusion and Regulatory Impact Review prepared for this action may be obtained from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, 907–586–7247

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228, or *jay.ginter@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

NMFS published a proposed rule to raise the maximum retainable percentage of pollock roe from 7 to 9 percent on February 11, 2003 (68 FR 6865), with comments invited through March 13, 2003. Two letters of comment were received by the end of the comment period and are responded to in the response to comments section. Additional background on the development of roe stripping regulations and the purpose and need for this action are contained in the preamble to the proposed rule.

This final rule raises the maximum retainable percentage of pollock roe

from 7 to 9 percent to accommodate increased roe recovery rates that have been attained by industry since the passage of the American Fisheries Act (AFA). Under the AFA, vessels in the BSAI pollock fishery have formed voluntary cooperatives that have eliminated the open access race for fish that characterized the BSAI pollock fishery before the AFA. Under these AFA cooperatives, participating catcher/processors and motherships have been able to dramatically improve product recovery rates by slowing down their operations, using more refined production techniques, and fishing more selectively. This increase in productivity under the AFA was examined in detail in the final Environmental Impact Statement prepared for AFA-related Amendments 61/61/13/8 to the FMPs for the groundfish, crab, and scallop fisheries off Alaska.

In addition to these general gains in productivity, catcher/processors and motherships have achieved higher roe recovery rates under the AFA through an increased ability to time their fishing activity to coincide with periods of peak roe recovery and through an increased ability to selectively target schools of large mature pollock. When circumstances are ideal, some catcher/processors and motherships have reached or exceeded the current 7–percent limit.

In 1999, the Council examined roe recovery rates by catcher/processors in the BSAI and concluded that sufficient rationale existed to raise the maximum retainable roe amount to 9 percent. After reviewing data on roe recovery rates, NMFS agreed with the Council's rationale.

To determine the appropriate roe retention limit under the AFA, NMFS examined roe recovery information from the 2000, 2001, and 2002 roe seasons, which were managed under AFA cooperatives. During this time period, AFA catcher/processors and motherships processed 26,286 mt of pollock roe and 826,913 mt round-weight equivalent of primary pollock products for an aggregate roe recovery rate of 3.2 percent for the 2000–2002 roe seasons. However, during each of the 3 years, certain vessels were able to achieve roe recovery rates that exceeded 7 percent during weeks of peak roe recovery. In 2000, one catcher/processor achieved roe recovery rates of 8.0 and 9.0 percent during two reporting weeks in March. In 2001, seven catcher/processors exceeded the 7–percent limit during the week of March 24. During that week, these seven catcher/processors achieved an aggregate roe recovery rate of 8.4 percent. In 2002, only one catcher/processor exceeded the 7–percent limit, with a roe recovery rate of 8.3 percent during the week of March 17. During this 3–year time period, these excesses totaled 185.6 mt of roe product, or 61.9 mt annually.

This action also affects non-AFA catcher/processors that engage in directed fishing for other groundfish species in the BSAI and encounter incidental catch of pollock. The maximum retainable percentage of pollock is 20 percent for vessels engaged in directed fishing for other groundfish species. Existing requirements at 50 CFR 679.27 require vessels engaged in directed fishing for groundfish other than pollock to retain all incidental catch of pollock up to the 20–percent maximum retainable percentage limit. Such vessels also are allowed to recover roe from their incidental catch of pollock. Under this final rule, catcher/processors that are engaged in directed fishing for species other than pollock also are allowed to retain pollock roe up to the 9–percent limit.

Response to Comments

NMFS received two comment letters by the end of the comment period on the proposed rule, both in favor of this action, but questioning the need for any retention limit. These comments are summarized and responded to here.

Comment 1: The United States Surimi Commission (USSC) supports the proposed increase in the roe-retention limit but would prefer a total removal of the roe retention restriction on the grounds that such a limit is redundant and unnecessary in light of subsequently adopted management measures that more effectively govern utilization rates onboard at-sea processing vessels in the BSAI pollock fishery. Since the passage of the AFA, the catcher/processors represented by USSC are producing nearly 50 percent more processed pollock per ton of catch than they were prior to the passage of the AFA. While overall roe recovery rates still average less than 7 percent, it is not unusual for vessels to encounter schools of fish at certain times of the year and in certain areas where the actual roe content of the catch exceeds 7 percent. In such instances, fishermen are faced with the dilemma of having to throw away the most valuable product they make in order to comply with an antiquated rule that was designed over a decade ago to discourage wasteful fishing and processing practices that are no longer extant in the fishery. An increase in the retention limit from 7 to 9 percent would help reduce the number of such instances. It would not, however, completely eliminate the possibility of vessels having to discard roe as roe recovery rates sometimes exceed 9 percent.

The better solution would be to eliminate the roe retention limit altogether. Although a roe retention limit may have been necessary in the past, it has long since outlived its usefulness insofar as the avoidance of wasteful fishing practices are concerned. Furthermore, all AFA catcher/processors now carry 2 full-time federal observers, must weigh all their catch on NMFS certified flow scales, and must comply with the requirements of the improved retention/improved utilization (IR/IU) program, which mandates 100 percent retention of pollock. Each of these measures are more than adequate to ensure that vessels are complying with the statutory ban on roe-stripping. For these reasons, the USSC would prefer to see the roe retention limit eliminated altogether rather than an upwards adjustment of an arbitrary limit that could still result in fishermen having to throw away portions of the most valuable product they produce. Such a result would seem to be dictated by National Standard 7's mandate that management measures ''minimize costs and avoid unnecessary duplication.''

Response: As noted in the preamble to the proposed rule, the Council and NMFS considered and rejected the alternative of eliminating the roe retention limit for two reasons:

First, AFA cooperatives that have produced a more rationalized fishery are not necessarily permanent. AFA cooperatives, which are voluntary organizations, could dissolve at any point in the future if the members no longer believe that remaining in cooperatives is in their interest. The fishery then could potentially return to a race-for-fish in which wasteful practice could again emerge. By raising the retention limit so that it does not exceed 9 percent, this rule provides a direct incentive to continue participation in the AFA cooperatives which have contributed to the higher utilization of raw product and the increased efficiency of higher roe yields.

Second, non-AFA catcher/processors engaged in directed fisheries for other species are required to retain incidental catch of pollock up to the 20–percent maximum retainable percentage. The 9 percent maximum retainable roe percentage is an additional measure to reduce incentives by vessel operators to sort incidental catch of pollock for roe bearing fish. Such activity could increase discard amounts in a manner inconsistent with the intent of

regulations intended to prevent roe stripping and reduce discard amounts under IR/IU. Therefore, maintaining a regulatory limit on roe retention is prudent to prevent the potential for a return to the practice of roe stripping in the event that the current AFA cooperatives chose to dissolve and to continue to limit the practice of roe stripping by vessels in non-AFA fisheries.

NMFS examined roe recovery data from 2000 to 2002 demonstrating that recovery rates have increased during some weekly periods from less than 7 percent to 8 and 9 percent. This data suggests that a recovery rate of 9 percent represents a current upper limit for AFA catcher processors and motherships. This rate of 9 percent is sufficient to capture the benefits of a higher recovery rate while avoiding the costs associated with discarding roe. Therefore, NMFS has determined that establishing a 9 percent roe retention limit is consistent with National Standard 7.

Comment 2: The At-sea Processors Association (APA) questions the need for any limit on the percentage of roe that may be retained in the BSAI pollock fishery given that: (1) There is no economic or other incentive for vessels in the directed pollock fishery to conduct roe stripping under the current management regime, (2) other rules and regulations now make roe stripping illegal and impractical, and (3) even a 9 percent cap could still result in the undesirable consequence of forcing fishermen to discard their most valuable product. For all of these reasons, APA would prefer to see the pollock roe retention cap eliminated altogether in the directed pollock fishery. On the other hand, if elimination of the cap is not an option in the context of the current rulemaking, it is essential that the cap be raised to the maximum extent possible. The current 7 percent cap is unrealistically low. It unnecessarily forces fishermen to discard a very valuable product and thwarts efforts to extract more value (and more edible protein) out of the nation's limited fishery resource.

Response: See response to comment 1.

Elements of the Final Rule

This final rule amends 50 CFR 679.20(g) by raising the maximum allowable roe retention percentage from 7 to 9 percent for pollock harvested in the BSAI. No changes were made from the proposed rule.

Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the conservation and management of the BSAI groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this action. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 1, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

■ 2. In § 679.20, paragraphs (g)(1)(i), (g)(4)(i)(B), and (g)(4)(ii)(B) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(g) * * *

(1) * * *

(i) Pollock roe retained on board a vessel at any time during a fishing trip must not exceed the following percentages of the total round-weight equivalent of pollock, as calculated from the primary pollock product on board the vessel during the same fishing trip:

(A) 7 percent in the Gulf of Alaska, and

(B) 9 percent in the Bering Sea and Aleutian Islands.

* * * * *

(4) * * *

(i) * * *

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during the same fishing trip, multiply the round-weight equivalent by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

* * * * *

(ii) * * *

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during a fishing trip, add the round-weight equivalents together; then, multiply the sum by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

* * * * *

[FR Doc. 03–17238 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 131
Wednesday, July 9, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV03–958–01 PR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Increased Assessment Rate and Defined Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) for the 2003–2004 and subsequent fiscal periods from $0.08 to $0.095 per hundredweight of onions handled, and would establish, in the regulatory text, the Committee's fiscal period beginning July 1 of each year and ending June 30 of the following year. The Committee locally administers the marketing order that regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATE: Comments must be received by July 24, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Ave, suite 385, Portland, OR 97204; Phone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable onions beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods from $0.08 to $0.095 per hundredweight of onions handled, and would establish, in the regulatory text, the Committee's fiscal period. The fiscal period begins July 1 of each year and ends June 30 of the following year.

The order provides authority for the Committee, with the approval of USDA, to establish a fiscal period. The Committee has operated under a fiscal period of July 1 through June 30 since its inception in the late 1950's, but this period has never been specified in the regulatory text. This rule would add to the order's rules and regulations a definition of the Committee's fiscal period. The fiscal period would be defined to be the 12 month period beginning July 1 and ending June 30 of the following year, both dates inclusive.

The order also provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members, four handler members and one public member. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on April 3, 2003, and in a vote of seven in favor, one against, and one abstention, recommended an assessment rate of $0.095 per hundredweight of onions handled. The assessment rate of $0.095 is $0.015 higher than the rate currently in effect. The order authorizes the Committee to establish an operating reserve of up to one fiscal period's operational expense. However, the Committee has maintained the operating reserve at a level of approximately one-half of one fiscal period's operational expenses. The Committee, over the last four fiscal periods, has reduced its operating reserve to this level. The Committee recommended the $0.015 increase so the total of assessment income ($870,200), contributions ($79,800), interest income ($6,000), and other income ($1,000) would equal the recommended expenses for 2003–2004 of $957,000. With these revenue sources, the Committee would not need to access its operating reserve and would maintain the reserve at the current level.

The Committee met on June 12, 2003 and unanimously recommended 2003–2004 expenditures of $957,000. In comparison, last year's budgeted expenditures were $1,044,824. The major expenditures for the 2003–2004 fiscal period include $10,000 for committee expenses, $148,353 for salary expenses, $72,610 for travel/office expenses, $59,170 for research expenses, $27,250 for export expenses, $589,617 for promotion expenses, and $50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2002–2003 were $10,000, $143,814, $77,460, $59,550, $54,000, $675,000, and $25,000, respectively.

The Committee estimates that onion shipments for the 2003–2004 fiscal period will be approximately 9,160,000 hundredweight, which should provide $870,200 in assessment income. Income derived from handler assessments, along with contributions ($79,800), interest income ($6,000), and other income ($1,000) would equal expenses. The Committee estimates that its operating reserve will be approximately $434,303 at the beginning of the 2003–2004 fiscal period. Funds in the reserve would be kept within the maximum permitted by the order of approximately one fiscal years's operational expenses (§ 958.44).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 37 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 250 onion producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

The Committee estimates that 32 of the 37 handlers of Idaho-Eastern Oregon onions ship under $5,000,000 worth of onions on an annual basis. According to the *Vegetables 2002 Summary* reported by the National Agricultural Statistics Service, the total farm gate value of onions in the regulated production area for 2002 was $93,807,000. Therefore, the 2002 average gross revenue for an onion producer in the regulated production area was $375,228. Based on this information, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities.

This rule would specify in the regulatory text the Committee's fiscal period beginning July 1 of each year and ending June 30 of the following year, and increase the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods from $0.08 to $0.095 per hundredweight of onions handled, and would establish, in the regulatory text, the Committee's fiscal period beginning July 1 of each year and ending June 30 of the following year. The Committee recommended an assessment rate of $0.095 per hundredweight, which is $0.015 higher than the rate currently in effect. The quantity of assessable onions for the 2003–2004 fiscal period is estimated at 9,160,000 hundredweight. Thus, the $0.095 rate should provide $870,200 in assessment income, which along with anticipated contributions, interest income, and other income is balanced to cover budgeted expenses expected to total about $957,000.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $10,000 for committee expenses, $148,353 for salary expenses, $72,610 for travel/office expenses, $59,170 for research expenses, $27,250 for export expenses, $589,617 for promotion expenses, and $50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2002–2003 were $10,000, $143,814, $77,460, $59,550, $54,000, $675,000, and $25,000, respectively.

The Committee reviewed and unanimously recommended 2003–2004 expenditures of $957,000. This budget will increase the budget line items for salary expenses and marketing order contingencies, and decrease the budget line items for travel and office expenses, research expenses, export expenses, and promotion expenses. Prior to arriving at this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Export, and Promotion Committees. These subcommittees discussed alternative expenditure levels, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry. The assessment rate of $0.095 per hundredweight of

assessable onions was then determined by taking into consideration the estimated level of assessable shipments, other revenue sources, and the Committee's goal of not having to use reserve funds during 2003–2004.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–2004 season could be about $5.00 per hundredweight. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could be about 1.9 percent.

This proposed rule would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the April 3, and the June 12, 2003, meetings were open to the public and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would not impose additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2003–2004 fiscal period begins on July 1, 2003, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is proposed to be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new section 958.112 is added to read as follows:

§ 958.112 Fiscal period.

The fiscal period shall begin July 1 of each year and end June 30 of the following year, both dates inclusive.

3. Section 958.240 is revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 2003, an assessment rate of $0.095 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: July 2, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–17277 Filed 7–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 03–036–1]

Veterinary Services User Fees; Pet Food Facility Inspection and Approval Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the user fee regulations to replace the flat rate annual user fees currently charged for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities with user fees based on hourly rates for inspections and approval. We have found that the flat rate annual user fees no longer cover the costs of our inspections and cannot be adequately formulated to cover the costs of inspections and reinspections mandated by various foreign regions to which those facilities export their pet food ingredients or products. This action would ensure that our user fees cover the cost of providing these services to pet food facilities.

DATES: We will consider all comments that we receive on or before September 8, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–036–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–036–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–036–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information concerning program operations for Veterinary Services, contact Dr. Thomas W. Burleson, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231, (301) 734–8364.

For information concerning user fee rate development, contact Ms. Kris Caraher, Accountant, User Fees Section,

Financial Systems and Services Branch, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

Pet food rendering facilities process animal byproducts by cooking them down into various products that are used as ingredients in pet foods and animal feeds. Pet food blending facilities take different materials and mix them according to manufacturers' specifications. Pet food digest facilities produce enzymatic meals in powdered or liquid form for use as pet food flavor enhancers. Pet food spraying and drying facilities produce powdered materials, which are also used as flavor enhancers. Pet food manufacturing facilities combine and cook ingredients to produce the finished pet food, which is then packaged for sale in the United States or for export to another country.

Facilities that process or manufacture pet food ingredients or products for export, including manufacturing, rendering, blending, digest, and spraying and drying facilities, are required by the European Union (EU) and some other foreign regions to be inspected and approved by the Animal and Plant Health Inspection Service (APHIS). These inspections and approvals are carried out by APHIS in accordance with the regulations in 9 CFR part 156, ''Voluntary Inspection and Certification Service.''

User fees to reimburse APHIS for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Section 130.11 lists flat rate fees for inspecting and approving pet food manufacturing, rendering, blending, digest, and spraying and drying facilities.

The flat rate annual user fees for inspection and approval of these facilities were established in a final rule we published in the **Federal Register** on June 20, 2000 (65 FR 38179–38182, Docket No. 98–045–2). Prior to that final rule, APHIS had charged hourly rate user fees for inspection of these facilities, as provided for by § 130.30(a)(11). We established the flat rate annual user fees in § 130.11 based on requests from pet food industry representatives that we modify our user fees to make it easier for them to know in advance what their costs would be. We calculated the flat rate annual user fees to reflect the average annual cost to APHIS of providing these services.

However, we have determined that APHIS is no longer recovering its full costs for providing these services through the flat rate annual user fees in § 130.11. The flat annual rate user fees for initial approval and renewal of approval of pet food manufacturing facilities were based on our estimates that initial approval would require 6.4 hours of labor on the part of Veterinary Services inspectors and support staff, while renewal of approval would require 5.4 hours. For pet food rendering facilities, the estimates were 5.8 hours for initial approval and 4.2 hours for renewal of approval; for pet food blender facilities, 6.7 hours for initial approval and 4.8 hours for renewal of approval; for pet food digest facilities, 6.0 hours for initial approval and 3.3 hours for renewal of approval; and for pet food spraying and drying facilities, 4.2 hours for initial approval and 2.5 hours for renewal of approval. (All these estimated times include both the time required to provide the service and travel time to and from the facilities.)

While these estimates were accurate at the time the user fees were established, foreign requirements for inspection and approval have changed somewhat in the interim, and we have found that initial approvals and renewals of approval can now require 1½ times the labor we had estimated they would require when the flat rate annual user fees were set. This means that APHIS does not recover its costs under the current flat rate annual user fee schedule.

In addition, the EU's requirements for inspection and approval of facilities that wish to export pet food to the EU changed dramatically on May 1, 2003. Inspections under these new requirements are more complex and thus require more labor, meaning that the estimates of labor required for inspection and approval on which the current flat rate user fees are based have become yet more outdated.

The EU's new requirements also make it infeasible to address the present unrecovered costs by simply recalculating the current flat rate user fees for inspection and approval of pet food facilities. The amount of time needed to complete the inspection processes that are required by the EU varies widely between pet food facilities, even pet food facilities of the same type. Charging a flat rate user fee for inspections performed in accordance with these new requirements would thus be inequitable, as facility operators whose facilities could be inspected in a relatively short amount of time would, in effect, be subsidizing facility operators whose facilities required inspections of greater length.

Furthermore, under the EU's requirements, pet food facilities that are not found to be in compliance at the initial inspection must, if they still wish to export pet food to the EU, undergo reinspection. The APHIS flat rate annual user fees for inspection and approval and for renewal of approval in § 130.11 are intended to cover APHIS' costs for all inspections required during the year. We developed these flat rate user fees based on an average of two inspections per year. However, the new EU requirements are likely to require more frequent reinspections for some facilities. The cost of these additional reinspections will not be recovered under the current flat rate user fees. A flat rate annual user fee that did take the possibility of these additional reinspections into account would also be inequitable; under such a fee, facility owners whose facilities required relatively few inspections would, in effect, be subsidizing those whose facilities required more inspections, to a far greater degree than under the EU's previous requirements.

Finally, we cannot predict what changes foreign governments may make to their requirements for inspection and approval of pet food facilities in the future, or what changes we might need to make in the flat rate user fees because of those changes. A more flexible system, using the hourly rates proposed here, would reduce the need for future rulemaking while ensuring that APHIS properly recovers its full costs for providing these services and that all customers are charged fairly.

These considerations have led us to conclude that the flat rate annual user fees for inspection and approval of pet food facilities, while providing cost certainty for facility operators and reducing administrative timekeeping costs for APHIS, have not achieved, and will not be able to achieve, their primary goal: Ensuring that APHIS recovers the costs of inspecting and approving such facilities. Returning to an hourly rate user fee would allow us to charge facility operators an appropriate amount for the labor expended in inspecting and approving their facilities, would allow us to recover the costs of any reinspections that may be required, and would give us more flexibility should the requirements of importing countries for inspection and approval change in the future.

Therefore, we are proposing to remove the flat rate user fees for inspection and approval of pet food manufacturing, rendering, blending, or digest facilities and pet food spraying and drying facilities from the table of flat rate user fees in § 130.11. With the

removal of these specific user fees, such facilities would be charged for inspection and approval in accordance with § 130.30, which provides, among other things, that user fees for inspections conducted under 9 CFR part 156 will be calculated at the hourly rate (or hourly overtime rate, if applicable) listed in that section when those inspections are not covered by flat rate user fees elsewhere in part 130.

In addition to listing user fees for the current and future fiscal years (FY 2003 and beyond), the table in § 130.11 lists user fees for fiscal years 2001 and 2002. Because fiscal years 2001 and 2002 have passed, we believe it is no longer necessary to list the user fees for those fiscal years in the regulations. Therefore, we are also proposing to amend the user fee table in § 130.11 by removing the columns that list fees for fiscal years 2001 and 2002. In addition, because this proposed rule will not be finalized during FY 2003, we are also proposing to remove the column that lists fees for FY 2003. Because there would then be only one column listing user fees, we are proposing to remove the designation ''Beginning October 1, 2003'' from that column.

Finally, because we would be removing the specific flat rate user fees for inspecting and approving pet food manufacturing, rendering, blending, digest, and spraying and drying facilities, it would no longer be necessary to maintain definitions in § 130.1 related to those fees. Specifically, we would amend § 130.1 by removing the definitions for *pet food blending facilities*, *pet food digest facilities*, *pet food manufacturing facilities*, *pet food rendering facilities*, and *pet food spraying and drying facilities*, as those terms would no longer be used in part 130.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS is proposing to use hourly and premium hourly rate user fees listed in § 130.30 to cover the cost of providing services for the approval of U.S. pet food manufacturing, rendering, blending, digest, and spraying and drying facilities in lieu of the current flat rate user fees contained in § 130.11. Facilities that process or manufacture pet food ingredients or products for export are required by the EU and other foreign countries to be inspected and approved by APHIS in order for the pet food to be imported. APHIS is proposing to replace the flat rates with hourly rates to recover its full costs for these inspection and approval services.

User fees recover the cost of operating a public system by charging those members of the public who use the system, rather than the public as a whole, for its operation. It is justifiable to recover the costs of the inspection and approval of U.S. pet food manufacturing, rendering, blending, digest, and spraying and drying facilities through user fees. These facilities benefit from the inspection service as it provides the approvals required by the countries to which they export; user fees thus internalize the costs of this service to those who require the service and benefit from it.

APHIS user fees are intended to cover the full cost of providing the service for which the fee is charged. The cost of providing a service includes direct labor and direct material costs. It also includes administrative support, Agency overhead, and departmental charges. Due to changes in the inspection and approval requirements of certain countries, APHIS has found that providing these services can now require up to 1½ times the labor estimated as being necessary when the flat rate annual user fees were set. Therefore, APHIS is not currently recovering all appropriate costs. In addition, the EU's requirements for inspection and approval of facilities that wish to export pet food to the EU changed dramatically on May 1, 2003. Inspections under these new requirements are more complex and thus require more labor, meaning that the labor estimates used for the current flat rates have become yet more outdated.

The amount of time required to perform an inspection can vary widely, depending on such factors as the size of the facility, the complexity of the operation, and the preparation that has occurred at the facility in anticipation of the inspection. However, the labor time associated with inspections is generally underrepresented by the current fees, and will become more so as requirements change. The current flat rate user fee of $404.75 for an initial inspection and approval at a pet food manufacturing, rendering, blending, or digest facility is the equivalent of approximately 5 hours at the hourly rate, but we have found it can easily take 10 or more hours to approve some facilities. It can, therefore, be expected that the total user fees charged under the hourly rate will be greater than the current flat rate for inspection and approval services.

To the extent that changes in user fees alter operational costs, any entity that utilizes APHIS services that are subject to user fees would be affected by a rule that changed those fees. The degree to which an entity is affected depends on its market power, or the ability to which costs can be either absorbed or passed on to its buyers. Without information on either profit margins and operational expenses of the affected entities, or the supply responsiveness of the pet food industry,[1] the scale of potential economic effects cannot be precisely predicted.

However, we do not expect that the proposed change in user fees would significantly impact users. Even at higher levels, the inspection fees represent a very small portion of the value of shipments from these facilities. In 1997,[2] dog and cat food manufacturers[3] had an average total annual value of shipments of $46.6 million, and even the smallest operations (1 to 4 employees) had an average total annual value of shipments of nearly $700,000. Other animal food manufacturers[4] had an average total annual value of shipments of $12.7 million, with the smallest operations (1 to 4 employees) having an average total annual value of shipments of $2.3 million. Renderers and other meat byproduct processors[5] had an average total annual value of shipments of $10.7 million, with the smallest operations (1 to 4 employees) having an average total annual value of shipments of nearly $800,000. Those processors specifically dealing with animal and marine feed and fertilizer byproducts[6] had an average total annual value of shipments of $16.2 million. Even if the proposed hourly rate user fees were to triple the inspection and approval costs of pet food facilities, the fees charged to these facilities would continue to be very small compared to their revenues.

Because the EU and other countries require U.S. facilities that process or manufacture pet food ingredients or products for export be inspected and

[1] The measurement of supply responsiveness would provide information on the likely impact on an entity's activities due to changes in operating costs.

[2] U.S. Census Bureau, 1997 Economic Census. The 2002 Census is not yet available.

[3] North American Industry Classification System (NAICS) code 311111, Dog & Cat Food Manufacturing.

[4] NAICS code 311119, Other Animal Food Manufacturing.

[5] NAICS code 311613, Rendering & Meat Byproduct Processing.

[6] NAICS code 3116134, Animal & Marine Feed and Fertilizer Byproducts.

approved by APHIS in order for the pet food to be imported into those countries, those facilities directly benefit from the inspections, as they are a necessary element for exports of these products to occur. In addition, using hourly rates would allow the fee to be tied directly to the amount of time required to perform the service at a given facility.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has set out criteria based on the North American Industry Classification System for determining which economic entities meet the definition of a small business. The entities potentially affected by this proposed rule will be U.S. manufacturers of pet food and pet food ingredients intended for export.

Under the SBA's criteria, an entity engaged in the manufacture of pet food or in rendering and meat byproduct processing is considered to be a small entity if it employs 500 or fewer employees. In 1997, nearly 99 percent of dog and cat food manufacturers would have been considered small under this criterion. Similarly, 100 percent of other animal food manufacturers and rendering and meat byproduct processors would have been considered small under this criterion. However, because, as discussed above, the inspection fees represent a very small portion of the value of shipments from these facilities, we expect that this proposed change in user fees should have a minimal impact on users, whether small or large.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 130.1 [Amended]

2. Section 130.1 would be amended by removing the definitions for *pet food blending facility, pet food digest facility, pet food manufacturing facility, pet food rendering facility,* and *pet food spraying and drying facility.*

3. In § 130.11, paragraph (a), the table would be revised to read as follows:

§ 130.11 User fees for inspecting and approving import/export facilities and establishments.

(a) * * *

Service	Unit	User fee
Embryo collection center inspection and approval (all inspections required during the year for facility approval).	per year	$380.00
Inspection for approval of biosecurity level three laboratories (all inspections related to inspection approving the laboratory for handling one defined set of organisms or vectors).	per inspection	977.00
Inspection for approval of slaughter establishment:		
Initial approval (all inspections)	per year	373.00
Renewal (all inspections)	per year	323.00
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:		
Approval (compliance agreement) (all inspections for first year of 3-year approval)	per year	398.00
Renewed approval (all inspections for second and third years of 3-year approval)	per year	230.00

* * * * *

Done in Washington, DC, this 2nd day of July 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–17332 Filed 7–8–03; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to terminate waiver of the Nonmanufactuer Rule for Small Arms Ammunition Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) intends to terminate the waivers of the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing. SBA's intent to terminate the waivers of the Nonmanufacturer Rule is based on our recent discovery of small business manufacturers for these classes of products. Terminating these waivers will require recipients of contracts set aside for small or 8(a) businesses to provide the products of small business manufacturers or processor on such contracts.

DATES: Comments must be received on or before July 31, 2003.

ADDRESS COMMENTS TO: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW

Washington DC, 20416, Tel: (202) 619–0422.

FOR FUTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Program must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on a six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

SBA announced its decision to grant the waiver of Small Arms Ammunition Manufacturing, in the **Federal Register** on August 2, 2002. It was recently brought to SBA's attention by a small business manufacturer and SBA's Procurement Center Representatives that a small business manufacturer exists for items within this class of products. For this reason, SBA intends to terminate the waiver previously granted for Small Arms Manufacturing, identified under Product Service Code (PSC) 1305 and North American Industry Classification System (NAICS) 332992.

Based on the above information, this notice proposes to terminate the class waivers of the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing, PSC 1305, NAICS 332992.

The public is invited to comment to SBA on the proposed termination of the waivers of the nonmanufacturer rule for the class of products specified. All comments by the public will be duly considered by SBA in determining whether to finalize its intent to terminate these classes of products.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–17322 Filed 7–8–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–84–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SP, and 747SR series airplanes. This proposal would require a one-time inspection of each emergency evacuation slide or slide/raft to determine if a certain discrepant hose assembly is installed, and replacement of the hose assembly with a new or serviceable assembly if necessary. This action is necessary to prevent the failure of an emergency evacuation slide or slide/raft to fully inflate during an emergency situation, which could impede an evacuation and result in injury to passengers or airplane crewmembers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–84–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from BFGoodrich Aircraft Evacuation Systems, 3414 S. Fifth Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Patrick Gillespie, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6429; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following

statement is made: ''Comments to Docket Number 2003–NM–84–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during a recent emergency evacuation aboard a Boeing Model 747–200B series airplane, two of the airplane's emergency evacuation slides did not fully inflate and were unusable during the evacuation. Investigation revealed that one of the two slides failed to fully inflate because one of the two inflation hoses for the slide had fractured at the hose fitting. (The cause of the other slide's underinflation has not been identified.) Similar fractures of the slide inflation hose at the swivel (lock) wire groove have been reported on other Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SP, and 747SR series airplanes. Fracture of an inflation hose for an emergency evacuation slide could result in failure of the emergency evacuation slide or slide/raft to fully inflate during an emergency situation, which could impede an evacuation and result in injury to passengers or airplane crewmembers.

The discrepant inflation hose assemblies were manufactured before May 30, 1983, and installed on Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SP, and 747SR series airplanes. As of May 30, 1983, the manufacturer of the inflation hose assembly began manufacturing modified hose assemblies. As of that date, new evacuation slides or slide/rafts were shipped with the modified hose assemblies. Therefore, Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SP, and 747SR series airplanes equipped with evacuation slides or slide/rafts that may have inflation hose assemblies manufactured before May 30, 1983, are subject to this proposed AD.

Explanation of Relevant Service Information

We have reviewed and approved BFGoodrich Service Bulletin 25–241, dated September 30, 1991. That service bulletin describes procedures for inspecting the part number information label on each inflation hose assembly on each emergency evacuation slide or slide/raft to determine the manufacturing/test date of the inflation hose assembly. For any hose assembly with a manufacturing/test date before May 30, 1983, the service bulletin specifies to replace the inflation hose assembly with a new or serviceable (modified) hose assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Service Bulletin

The service bulletin recommends that the actions therein be accomplished ''at the next scheduled maintenance action.'' We find that such a non-specific compliance time may not ensure that the proposed actions are accomplished in a timely manner. In developing an appropriate compliance time for this action, we considered the safety implications, operators' normal maintenance schedules, and the compliance time recommended by the airplane manufacturer. In consideration of these items, we have determined that 36 months represents an appropriate interval of time wherein the proposed actions can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. This compliance time is consistent with the recommendation of the airplane manufacturer.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Explanation of Cost Impact

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 333 airplanes of the affected design in the worldwide fleet. The FAA estimates that 88 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $5,720, or $65 per airplane.

Should an operator be required to accomplish the replacement of a hose assembly, it would take approximately 12 work hours per hose assembly, at an average labor rate of $65 per work hour. Required parts would cost between $795 and $1,169 per hose assembly. Based on these figures, the cost impact of the proposed replacement is estimated to be between $1,575 and $1,949 per hose assembly.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1)

is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–84–AD.

Applicability: All Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SP, and 747SR series airplanes; certificated in any category; and equipped with BFGoodrich slides or slide/rafts having part number 7A1238–( )( ), 7A1239–( )( ), 7A1248–( )( ), 7A1261–( )( ), 7A–1255–( )( ), 7A–1256–( )( ), or 7A–1257–( )( ), where ''( )( )'' represents any dash number of those part numbers.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of an emergency slide or slide/raft to fully inflate during an emergency situation, which could impede an evacuation and result in injury to passengers or airplane crewmembers, accomplish the following:

Inspection to Determine Manufacturing Date

(a) Within 36 months after the effective date of this AD, perform a one-time inspection of the part number information label on each inflation hose assembly on each emergency evacuation slide or slide/raft to determine the manufacturing/test date of the inflation hose assembly. Do this inspection per BFGoodrich Service Bulletin 25–241, dated September 30, 1991. If the manufacturing/test date is May 30, 1983, or later, no further action is required for that inflation hose assembly.

Replacement of Inflation Hose Assembly

(b) For any inflation hose assembly having a manufacturing/test date before May 30, 1983, or on which the manufacturing/test date cannot be determined: Before further flight, replace the subject inflation hose assembly with a new or serviceable hose assembly having a manufacturing/test date on or after May 30, 1983, per BFGoodrich Service Bulletin 25–241, dated September 30, 1991.

Parts Installation

(c) As of the effective date of this AD, no person shall install an inflation hose assembly having a manufacturing/test date before May 30, 1983, or on which the manufacturing/test date cannot be determined, on an emergency evacuation slide or slide/raft on any airplane.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 30, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17316 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–91–AD]

RIN 2120–AA64

Airworthiness Directives; Various Boeing and McDonnell Douglas Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to various Boeing and McDonnell Douglas transport category airplanes, that currently requires revising the Airplane Flight Manual (AFM) to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. The actions specified by that AD are intended to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane. This action would remove certain requirements for certain airplanes and revises the direction to the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning occurs, rather than ''when the cabin altitude warning horn sounds.'' This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–91–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Boeing Airplane Models:* Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

McDonnell Douglas Airplane Models: Joe Hashemi, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5380; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the

proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–91–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 24, 2003, the FAA issued AD 2003–03–15, amendment 39–13039 (68 FR 4892, January 31, 2003), applicable to various Boeing and McDonnell Douglas transport category airplanes, to require revising the Airplane Flight Manual (AFM) to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. The requirements of that AD are intended to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane.

Actions Since Issuance of Existing Rule

Since the issuance of that AD, the manufacturer has provided data to the FAA substantiating that, for the McDonnell Douglas airplanes specified in AD 2003–15–03, the positive pressure created with the ''Emergency'' setting of the oxygen masks during rapid decompression events is unnecessary. The ''Emergency'' setting of the oxygen masks would require the flightcrew to do pressure breathing, which makes it difficult for the flightcrew to communicate or concentrate.

In addition, the manufacturer also requested that the words ''If the cabin altitude warning occurs'' be used for the McDonnell Douglas airplanes specified in AD 2003–15–03 instead of the words currently used, ''If the cabin altitude warning horn sounds.'' The manufacturer advised that not all McDonnell Douglas airplanes specified in AD 2003–15–03 are equipped with cabin altitude warning horns.

Advising the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning occurs is necessary to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 2003–03–15 to remove reference to the word ''Emergency'' when specifying ''Crew Oxygen Mask—ON/100%,'' for all the McDonnell Douglas airplanes specified in that AD.

Additionally, the proposed AD would revise AD 2003–03–15 to specify that, for all McDonnell Douglas airplanes, the words ''If the cabin altitude warning occurs'' be used rather than the words, ''If the cabin altitude warning horn sounds.''

Editorial Changes

An alternative method of compliance (AMOC) was issued for AD 2003–03–15 on March 12, 2003, for certain McDonnell Douglas airplanes. That AMOC specified the wording ''for the AD requirement for oxygen masks to be immediately donned as the first crew action in the event of a rapid 'decompression.' '' However, Figures 4, 5, 6, and 8 in that AMOC specify the wording ''Cabin Altitude Warning or Rapid Depressurization.'' Although AD 2003–03–15 uses the wording decompression in Figures 5, 6, and 7, the FAA has changed that wording in this NPRM to read ''depressurization'' for Figures 5, 6, and 7 of this proposed rule. For the purposes of this AD, we consider that there is no distinction between the meaning of depressurization and the meaning of decompression. The FAA considers that changing the wording in those Figures will more clearly align with the ''pressurization'' wording used in the AMOC issued on March 12, 2003. Additionally, such standardization of the term ''pressurization'' used in the Figures specified for McDonnell Douglas airplanes should assist operators by clarifying the requirements of this proposed AD.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, we no longer need to include it in each individual AD. However, this proposed AD identifies the office authorized to issue AMOCs.

Cost Impact

There are approximately 6,956 airplanes (5,179 Boeing airplanes and 1,777 McDonnell Douglas airplanes) of the affected design in the worldwide fleet. The FAA estimates that 3,601 airplanes (2,392 Boeing airplanes and 1,209 McDonnell Douglas airplanes) of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $216,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal

would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–13039 (68 FR 4892, January 31, 2003), and by adding a new airworthiness directive (AD), to read as follows:

Transport Category Airplanes: Docket 2003–NM–91–AD. Revises AD 2003–03–15, Amendment 39–13039.

Applicability: The airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—AFFECTED AIRPLANE MODELS

Airplane manufacturer	Airplane model
Boeing.	707 series airplanes.
	720 series airplanes.
	727 series airplanes.
	737–100 series airplanes.
	737–200 series airplanes.
	737–200C series airplanes.
	737–300 series airplanes.
	737–400 series airplanes.
	737–500 series airplanes.
	747–100 series airplanes.
	747–100B series airplanes.
	747–100B SUD series airplanes.
	747–200B series airplanes.
	747–200F series airplanes.
	747–200C series airplanes.
	747–300 series airplanes.
	747SR series airplanes.
	747SP series airplanes.
McDonnell Douglas.	DC–8–11 airplanes.
	DC–8–12 airplanes.
	DC–8–21 airplanes.
	DC–8–31 airplanes.
	DC–8–32 airplanes.
	DC–8–33 airplanes.
	DC–8–41 airplanes.
	DC–8–42 airplanes.
	DC–8–43 airplanes.
	DC–8–51 airplanes.
	DC–8–52 airplanes.
	DC–8–53 airplanes.
	DC–8F–54 airplanes.
	DC–8–55 airplanes.
	DC–8F–55 airplanes.
	DC–8–61 airplanes.
	DC–8–61F airplanes.
	DC–8–62 airplanes.
	DC–8–62F airplanes.
	DC–8–63 airplanes.
	DC–8–63F airplanes.
	DC–8–71 airplanes.
	DC–8–71F airplanes.
	DC–8–72 airplanes.
	DC–8–72F airplanes.
	DC–8–73 airplanes.
	DC–8–73F airplanes.
	DC–9–11 airplanes.
	DC–9–12 airplanes.
	DC–9–13 airplanes.
	DC–9–14 airplanes.
	DC–9–15 airplanes.
	DC–9–15F airplanes.
	DC–9–21 airplanes.
	DC–9–31 airplanes.
	DC–9–32 airplanes.
	DC–9–32 (VC–9C) airplanes.
	DC–9–32F airplanes.
	DC–9–32F (C–9A, C–9B) airplanes.
	DC–9–33F airplanes.
	DC–9–34 airplanes.
	DC–9–34F airplanes.
	DC–9–41airplanes.
	DC–9–51 airplanes.
	DC–9–81 (MD–81) airplanes.
	DC–9–82 (MD–82) airplanes.
	DC–9–83 (MD–83) airplanes.
	DC–9–87 (MD–87) airplanes.
	MD–88 airplanes.
	MD–90–30 airplanes.
	DC–10–10 airplanes.
	DC–10–10F airplanes.
	DC–10–15 airplanes.
	DC–10–30 airplanes.
	DC–10–30F airplanes.
	DC–10–30F (KC–10A, KDC–10) airplanes.
	DC–10–40 airplanes.
	DC–10–40F airplanes.
	MD–10–10F airplanes.
	MD–10–30F airplanes.
	MD–11 airplanes.
	MD–11F airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane, accomplish the following:

Revision to the Airplane Flight Manual

(a) Within 90 days after the effective date of this AD: For the applicable airplane models listed in the ''For—'' column of Table 2 of this AD, revise the procedures regarding donning oxygen masks in the event of rapid depressurization, as contained in the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM), by replacing the text in the ''Replace—'' column of Table 2 of this AD with the information in the applicable figure referenced in the ''With the Information In—'' column of Table 2 of this AD. This may be accomplished by recording the AD number of this AD on the applicable figure and inserting it into the AFM. Table 2 and Figures 1 through 9 follow:

TABLE 2.—AFM REVISIONS

For—	Replace—	With the Information in—
Boeing Model 707, 720, and 727 series airplanes.	*''RAPID DEPRESSURIZATION* ..... Oxygen Masks & Regulators—ON, 100% ALL''	Figure 1 of this AD.
Boeing Model 737–100, –200, and –200C series airplanes.	*''RAPID DEPRESSURIZATION* (With airplane altitude above 14,000 feet M.S.L.) ..... PRIMARY Oxygen Masks & Regulators—ON, 100%''	Figure 2 of this AD.

TABLE 2.—AFM REVISIONS—Continued

For—	Replace—	With the Information in—
Boeing Model 737–300, 737–400, 737–500, 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes.	*''RAPID DEPRESSURIZATION* (With airplane altitude above 14,000 feet M.S.L.) ..... RECALL ..... Oxygen Masks & Regulators—ON, 100%''	Figure 3 of this AD.
McDonnell Figure 5 of Douglas Model DC–9-11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes.	*''RAPID DECOMPRESSION/EMERGENCY DESCENT* ..... *Phase I and II* Manual Pressurization Control ..... FULL FORWARD AND MANUALLY LOCKED ..... Note: Manual Pressurization control forces may be high, apply forces as required Crew Oxygen Masks—ON''	Figure 5 of this AD.
McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88 airplanes.	*''RAPID DECOMPRESSION/EMERGENCY DESCENT* ..... *Phase I and II* Manual Pressurization Control—FULL FORWARD AND MANUALLY LOCKED ..... Note: Manual Pressurization control forces may be high, apply forces as required Crew Oxygen Masks—ON/EMERGENCY/100%''	Figure 6 of this AD.
McDonnell Douglas Model MD–90-30 airplanes.	*''RAPID DECOMPRESSION* ..... OXY MASKS—ON/100%/EMERGENCY''	Figure 7 of this AD.
McDonnell Douglas DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A, KDC–10), DC–10–40, and DC–10–40F airplanes.	''RAPID DEPRESSURIZATION/EMERGENCY DESCENT ..... Recall ..... Cabin OUTFLOW VALVE —VERIFY CLOSED (CLOSE ELECTRICALLY OR MANUALLY IF NOT CLOSED) Oxygen Masks —100% (if required)''	Figure 8 of this AD.
McDonnell Douglas MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes.	*''CABIN ALTITUDE* ..... Memory Item Outflow Valve—Verify Closed''	Figure 9 of this AD.

Figure 1

For Boeing Model 707, 720, and 727 Series Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
If the cabin altitude warning horn sounds:

Oxygen Masks & Regulators. ON, 100%, ALL''

The rest of the steps under this heading in the AFM are unchanged.

Figure 2

For Boeing Model 737–100, –200, and –200C Series Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
If the cabin altitude warning horn sounds:
PRIMARY

Oxygen Masks & Regulators. ON, 100%''

The rest of the steps under this heading in the AFM are unchanged.

Figure 3

For Boeing Model 737–300, 737–400, 737–500, 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP Series Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
If the cabin altitude warning horn sounds:
RECALL

Oxygen Masks & Regulators. ON, 100%''

The rest of the steps under this heading in the AFM are unchanged.

Figure 4

For McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8F–54, DC–8–55, DC–8F–55, DC–8–61, DC–8–61F, DC–8–62, DC–8–62F, DC–8–63, DC–8–63F, DC–8–71, DC–8–71F, DC–8–72, DC–8–72F, DC–8–73, and DC–8–73F Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING/RAPID DEPRESSURIZATION
Phase I and II
If the cabin altitude warning occurs:

Crew oxygen mask & ON/100%''

The rest of the steps under this heading in the AFM are unchanged.

Figure 5

For McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING/RAPID DEPRESSURIZATION/EMERGENCY DESCENT
Phase I and II
If a cabin altitude warning occurs:

Crew Oxygen Masks	ON/100%
Manual Pressurization Control.	FULL FORWARD AND MANUALLY LOCKED

Note: Manual Pressurization control forces may be high, apply forces as required.''

The rest of the steps under this heading in the AFM are unchanged.

Figure 6

For McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''*CABIN ALTITUDE WARNING/RAPID DEPRESSURIZATION/EMERGENCY DESCENT*
Phase I and II
If the cabin altitude warning occurs:

Crew Oxygen Mask ..	ON/100%
Manual Pressurization Control.	FULL FORWARD AND MANUALLY LOCKED

Note: Manual Pressurization control forces may be high, apply forces as required.''

The rest of the steps under this heading in the AFM are unchanged.

Figure 7

For McDonnell Douglas MD–90–30 Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
If the cabin altitude warning occurs:

OXY MASKS	ON/100%''

The rest of the steps under this heading in the AFM are unchanged.

Figure 8

For McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A, KDC–10), DC–10–40, and DC–10–40F Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION/EMERGENCY DESCENT
Recall
If the cabin altitude warning occurs:

Oxygen Masks	ON/100%
Cabin	
OUTFLOW VALVE ..	VERIFY CLOSED (CLOSE ELECTRICALLY OR MANUALLY IF NOT CLOSED)''

The rest of the steps under this heading in the AFM are unchanged.

Figure 9

For McDonnell Douglas Model MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR CABIN ALTITUDE
If the cabin altitude warning occurs:

	Memory Item
Oxygen Masks	ON/100%
Outflow Valve	Verify Closed''

The rest of the steps under this heading in the AFM are unchanged.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, or the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 1, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17317 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SR and 747SP Series Airplanes Equipped With Pratt & Whitney JT9D Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing transport category airplanes listed above. This proposal would require drilling witness holes through the cowl skin at the cowl latch locations in the left-hand side of the cowl panel assembly of each engine. This action is necessary to prevent improper connection of the latch, which could result in separation of a cowl panel from the airplane. Such separation could cause damage to the airplane, consequent rapid depressurization, and hazards to persons or property on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–207–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6499; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–207–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of in-flight separation of the cowl panels on the left- and right-hand sides of a Model 747 series airplane. Investigation revealed that the probable cause of the separation was improper latching of the cowl latch assemblies. The original cowl latch design allowed the latch to appear connected and latched, when it may not have been attached to the mating U-bolt. An improved design was developed for the latch to prevent incorrect latching, but in-service experience has shown that improper latching is still possible, even with the new latch. The addition of witness holes will allow the mechanic to visually inspect before a flight to determine that the cowl latch is properly connected. Improper connection of the latch could result in separation of a cowl panel from the airplane. Such separation could cause damage to the airplane, consequent rapid depressurization, and hazards to persons or property on the ground.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–71–2301, dated May 30, 2002, which describes procedures for drilling 0.50-inch-diameter witness holes through the cowl skin at each of the six cowl latch locations located on the left-hand side of the cowl panel assembly of each engine. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Explanation of Compliance Time

We have determined that a compliance time of 36 months for initiating the proposed actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, this AD identifies the office authorized to approve alternative methods of compliance.

Explanation of Cost Increase

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 345 airplanes of the affected design in the worldwide fleet. The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane (2 work hours per engine) to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $56,160, or $520 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–207–AD.

Applicability: Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SR, and 747SP series airplanes; equipped with Pratt & Whitney JT9D series engines; line numbers 1 through 669 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper connection of the cowl latch located in the left-hand side of the cowl panel assembly of each engine, which could result in separation of a cowl panel from the airplane, accomplish the following:

Drill Holes

(a) Within 36 months after the effective date of this AD: Drill witness holes through the cowl skin at each of the six cowl latch locations located on the left-hand side of the cowl panel assembly of each engine, per paragraphs 3.B.1. through 3.B.4. of the Accomplishment Instructions of Boeing Service Bulletin 747–71–2301, dated May 30, 2002.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 1, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17318 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposal would require revising the airworthiness limitations section of the Instructions for Continued Airworthiness by incorporating new structural inspection intervals for the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559; repairing the vertical beams if necessary; and submitting inspection findings to the airplane manufacturer. This action is necessary to detect and correct, in a timely manner, fatigue cracks in the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559, which could result in the reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–143–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–143–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. TCCA advises that fatigue cracks were found in the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559. This

condition, if not corrected, could result in the reduced structural integrity of the airplane.

Explanation of Canadian Airworthiness Directive and Relevant Service Information

TCCA has issued Canadian airworthiness directive CF–2003–08, dated April 23, 2003, in order to ensure the continued airworthiness of these airplanes in Canada. The Canadian airworthiness directive requires revising the Transport Canada-approved maintenance schedule by incorporating the revised inspection requirements for airworthiness limitations (AWL) as introduced in Canadair Temporary Revision (TR) 2B–1566, Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' dated January 31, 2003. The TR describes new structural inspection intervals for the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559 and submission of inspection findings to the airplane manufacturer.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the AWL section of the Instructions for Continued Airworthiness by incorporating new structural inspection intervals for the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559; repairing the vertical beams if necessary; and submitting inspection findings to the airplane manufacturer. The AWL revision is required to be accomplished per the TR described previously.

Interim Action

This is considered to be interim action. The inspection reports that would be required by this proposed AD would enable the manufacturer to obtain better insight into the cause of the fatigue cracks in the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559. Once final action has been identified, the FAA may consider further rulemaking.

Difference Between This Proposed AD and the Canadian Airworthiness Directive

Operators should note that, although the Canadian airworthiness directive requires that the Bombardier Aerospace Regional Aircraft Technical Help Desk be contacted for approved repair instructions, this proposed AD would require repairs to be accomplished per a method approved by either the FAA or TCAA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or TCAA would be acceptable for compliance with this proposed AD.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, the office authorized to approve AMOCs is identified in each individual AD, and Note 1 includes a special provision for airplanes with respect to Airworthiness Limitations.

Increase in Labor Rate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 533 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $34,645, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–143–AD.

Applicability: Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, serial numbers 7003 through 7999 inclusive; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance from the office identified in paragraph (d) of this AD and Sections 39.19 and 39.21 of the Federal Aviation Regulations (14 CFR 39.19 and 39.21). The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct, in a timely manner, fatigue cracks in the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559, which could result in the reduced structural integrity of the airplane, accomplish the following:

Revise Airworthiness Limitations (AWL) Section

(a) Within 14 days after the effective date of this AD, revise the AWL section of the Instructions for Continued Airworthiness by incorporating the contents of Canadair Temporary Revision 2B–1566, Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' dated January 31, 2003, into the AWL section. Thereafter, except as provided in paragraph (d) of this AD, no alternative structural inspection intervals may be approved for the vertical beams on the pressure bulkheads at fuselage stations 409+128 and 559.

Note 2: When the contents of Temporary Revision (TR) 2B–1566 have been included in the general revisions of the AWL section, the general revisions may be incorporated into the AWL section, and the TR may be removed from the AWL section.

Repair and Revise AWL Section

(b) If any crack is found during any inspection done according to the AWL section of the Instructions for Continued Airworthiness specified in paragraph (a) of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Before further flight: Repair per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(2) Within 14 days after receiving the new airworthiness limitations associated with a repair: Revise the AWL section of the Instructions for Continued Airworthiness by inserting a copy of the new airworthiness limitation and inspection requirements associated with the FAA- or TCCA-approved repair referred to in paragraph (b)(1) of this AD into the Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations'' section. Thereafter, except as provided in paragraph (d) of this AD, no alternative structural inspection intervals specified in the FAA- or TCCA-approved repair may be approved for the vertical beams on the pressure bulkheads at fuselage stations 409+128 and 559.

Reporting

(c) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (a) of this AD to Bombardier, Inc., Canadair, Aerospace Group, CRJ Technical Help Desk, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada; fax (514) 855–8501; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive Canadian airworthiness directive CF–2003–08, dated April 23, 2003.

Issued in Renton, Washington, on July 2, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17319 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–60–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes. This proposal would require inspection of the nose landing gear (NLG) and main landing gear (MLG) to ensure that certain bolts are in place; repetitive inspections of the bolts and bolt areas for evidence of corrosion; and corrective action, if necessary. This action is necessary to prevent failure of the NLG or MLG due to corroded or missing bolts, which could cause loss of connection pins, and consequent collapse of the landing gear during ground maneuvers or upon landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–60–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–60–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 and –300 series airplanes. The LBA advises that operators have reported severely corroded bolts on the landing gear, including actuator bolts on the main landing gear (MLG). In another case, an inspection revealed that a brace assembly bolt on the nose landing gear (NLG) was missing. Corrosion of the bolts may lead to bolt failure, which may lead to loss of one or more of the bolts in the landing gear assemblies. The bolts secure connection pins; with the bolts missing or failed, the connection pins will migrate due to vibration and eventually fall out. This condition, if not corrected, could result in failure of the NLG or MLG due to corroded or missing bolts, which could cause loss of connection pins, and consequent collapse of the landing gear during ground maneuvers or upon landing.

Explanation of Relevant Service Information

Dornier has issued Service Bulletins SB–328–32–414 (for Model 328–100 series airplanes) and SB–328J–32–147 (for Model 328–300 series airplanes), both dated December 3, 2001, which describe procedures for inspecting the NLG and MLG to ensure that certain bolts are in place, and replacing any bolts that are missing or out of place, with bolts having the same part number. The service bulletins also describe procedures for removing the nuts, bolts, and washers of the NLG and MLG, and inspecting for evidence of corrosion; replacing the bolt with a part having the same part number; and applying corrosion prevention compound to the bolt shaft. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directives 2002–014/2 (for Model 328–100 series airplanes) and 2002–015/2 (for Model 328–300 series airplanes), both dated March 7, 2002, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule, German Airworthiness Directives, and Relevant Service Bulletins

Operators should note that, although the German airworthiness directives and the referenced service bulletins specify inspecting for bolt placement prior to the next flight for airplanes ''with more than 4,000 flight hours or 24 months since new,'' this proposed AD would require that inspection to be done at the later of these times: (1) Within 4,000 total flight hours, or within 24 months since the date of issuance of the original Airworthiness Certificate, or within 24 months since the date of issuance of the Export Certificate of Airworthiness, whichever occurs first; or (2) within 6 days after the effective date of the AD.

Operators should also note that, although the German airworthiness directives and the referenced service bulletins specify inspecting for corrosion on bolts at the next ''A-check,'' this proposed AD would require that inspection to be done within 400 flight hours or 6 months after accomplishing the inspection for bolt placement.

Operators should also note that, although the German airworthiness directives require the removal, inspections, and replacement of corroded bolts and washers with new bolts and washers of the same part number to be one-time actions, this proposed AD would require that those actions be repeated at intervals not to exceed 4,000 flight hours or 24 months, whichever occurs first.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now

included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

The FAA estimates that 53 Model 328–100 series airplanes and 39 Model 328–300 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection for bolt placement, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact on U.S. operators for the proposed inspection for bolt placement is estimated to be $5,520, or $60 per airplane.

The FAA estimates that it would take approximately 5 work hours per airplane to accomplish the proposed inspection for corrosion, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact on U.S. operators for the proposed inspection for corrosion is estimated to be $27,600, or $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fairchild Dornier GMBH: Docket 2002–NM–60–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3119 inclusive, and Model 328–300 series airplanes having serial numbers 3105 through 3200 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the nose landing gear (NLG) or main landing gear (MLG) due to corroded or missing bolts, which could cause loss of connection pins, and consequent collapse of the landing gear during ground maneuvers or upon landing, accomplish the following:

Service Bulletin Reference

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 328–100 series airplanes: Dornier Service Bulletin SB–328–32–414, dated December 3, 2001.

(2) For Model 328–300 series airplanes: Dornier Service Bulletin SB–328J–32–147, dated December 3, 2001.

Inspection of Bolt Placement

(b) Perform a one-time general visual inspection of the NLG and MLG to ensure that the bolts are in place, per paragraph 2.B1) of the applicable service bulletin. Do the inspection at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD. If all bolts are in place, no further action is required by this paragraph.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) Within 4,000 total flight hours, or within 24 months since the date of issuance of the original Airworthiness Certificate, or within 24 months since the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 6 days after the effective date of this AD.

Corrective Action

(c) During the inspection required by paragraph (b) of this AD, if any bolt is missing or is not in position: Prior to further flight, replace the bolt with a bolt having the same part number, per the applicable service bulletin.

Inspections for Corrosion

(d) Within 400 flight hours or 6 months after accomplishing the inspection required by paragraph (b) of this AD, whichever occurs first: Remove the nuts, bolts, and washers of the NLG and MLG, and perform a detailed inspection for evidence of corrosion. Do the inspection per the applicable service bulletin. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours or 24 months, whichever occurs first.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no evidence of corrosion is found on any part, or if a new bolt is installed: Prior to further flight, apply corrosion prevention compound to the bolt shaft and install the bolt, per the applicable service bulletin.

(2) If any evidence of corrosion is found: Prior to further flight, replace the bolt with a part having the same part number and apply corrosion prevention compound to the bolt shaft and install the bolt, per the applicable service bulletin.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in German airworthiness directives 2002–014/2 and 2002–015/2, both dated March 7, 2002.

Issued in Renton, Washington, on July 1, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17314 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–152–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This proposal would require modification of the aft pitch load fitting of the diagonal brace of the nacelle strut of each wing. This action is necessary to prevent loss of the fuse pin of the pitch load fitting due to fatigue caused by improper clearance between the fuse pin and bushing, which could result in increased loads in the wing-to-strut joints and consequent separation of the strut and engine from the wing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–152–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–152–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during production, excessive clearance between the fuse pin and the bushing of the aft pitch load fitting of the diagonal brace of the nacelle strut of the wing was found on certain Model 767 series airplanes. Such improper clearance may lead to reduced fatigue life and potential loss of the fuse pin, which could result in increased loads in the wing-to-strut joints and consequent separation of the strut and engine from the wing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–54A0102, dated November 8, 2001, which describes procedures for modification of the aft pitch load fitting of the diagonal brace of the nacelle strut of each wing. The modification includes, among other things, doing dye penetrant inspections for cracking or damage of the fitting; reworking the fitting if cracking or damage is found; honing, chamfering, measuring, and machining the fitting if no cracking or damage is found; and replacing the bushing and fuse pin. Replacement of the existing bushing with a bushing having a smaller inner diameter, and replacement of the fuse pin with a new fuse pin, will ensure that the proper clearance between the fuse pin and bushing of the aft pitch load fitting of the diagonal brace is maintained. Consequently, the fuse pin will retain its designed fatigue life. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the

FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, this AD identifies the office authorized to approve alternative methods of compliance.

Cost Impact

There are approximately 59 airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 39 work hours per wing to accomplish the proposed actions (includes access and close-up), and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,256 per airplane. Based on these figures, the cost impact of the actions proposed by this AD on U.S. operators is estimated to be $317,952, or $9,936 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–152–AD.

Applicability: Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–54A0102, dated November 8, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the fuse pin of the aft pitch load fitting of the diagonal brace, which could result in increased loads in the wing-to-strut joints and consequent separation of the strut and engine from the wing, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Modify the aft pitch load fitting of the diagonal brace of the nacelle strut of each wing (including dye penetrant inspections for cracking or damage of the fitting; reworking the fitting if cracking or damage is found; honing, chamfering, measuring, and machining the fitting if no cracking or damage is found; and replacing the bushing and fuse pin with new components) by accomplishing all of the actions specified in paragraphs 3.A. through 3.J. of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0102, dated November 8, 2001. Any applicable follow-on corrective actions must be done before further flight.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 1, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17315 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB64

Minimum Financial and Related Reporting Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to amend certain of its minimum financial and related reporting requirements for futures commission merchants (''FCMs'') and introducing brokers (''IBs''). Regulations currently require FCMs to maintain minimum adjusted net capital that is the greatest of: $250,000; 4 percent of customer funds required to be segregated by the Commodity Exchange Act (''Act'') and the Commission's regulations; the amount of adjusted net capital required by a registered futures association; or for those FCMs that also are registered as securities brokers or dealers with the Securities and Exchange Commission (''SEC''), the amount of net capital required by specified SEC regulations. This proposed rule would delete that part of the minimum adjusted net capital requirement that is based on segregated customer funds and replace it with an amount based on maintenance margin levels of futures and options positions carried by an FCM. The proposed amendment would reflect risk-based capital rules that have already been adopted by a clearing organization, two exchanges and the National Futures Association (''NFA'').

The Commission also is proposing to reduce the time periods allowed before an FCM must take a capital charge for outstanding margin calls. The Commission is further proposing conforming amendments to capital computations that FCMs must perform for purposes related to equity capital, subordination agreements and the Commission's ''early warning'' requirements. The Commission also is proposing to reduce the time frames for

FCMs to report certain events. The proposed time frames would be consistent with those currently provided in SEC rules applicable to securities brokers and dealers. The Commission also is proposing to amend reporting requirements for FCMs or IBs to streamline Commission procedures and to eliminate unnecessary filing requirements.

DATES: Comments must be received on or before September 8, 2003.

ADDRESSES: Comments may be sent to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Attn.: Secretariat. In addition, comments may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* References should be made to ''Proposed Rules for Risk-Based Capital.''

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Deputy Director, at (202) 418–5495 or Thelma Diaz, Special Counsel, at (202) 418–5137, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: *(tsmith@cftc.gov)* or *(tdiaz@cftc.gov).*

SUPPLEMENTARY INFORMATION:

I. Background—Financial Safeguards

As part of its regulatory responsibilities, the Commission monitors the financial integrity of the commodity futures and options markets and the intermediaries that market participants employ in their trading activities. The Commission's financial and related recordkeeping and reporting rules are part of a system of financial safeguards that also includes exchange and clearinghouse risk management and financial surveillance systems, exchange and clearinghouse rules and policies on clearing and settlements, and financial and operational controls and risk management employed by market intermediaries themselves.

Two primary financial safeguards under the Act are: (1) The requirement that FCMs segregate from their own assets all money and property belonging to their customers; and (2) the imposition of minimum capital requirements for FCMs and IBs.[1] The requirement that FCMs segregate customer funds is set forth in section 4d(a)(2) of the Act. Section 4d(a)(2) requires, among other things, that an FCM segregate from its own assets all money, securities, and other property held for customers as margin for their commodity futures and option contracts, as well as any gains accruing to such customers from open futures and option positions.

Commission Rules 1.20 through 1.30, as well as 1.32 and 1.36 implement the segregation of funds provisions of section 4d(a)(2) of the Act for FCMs holding funds for customers trading on U.S. commodity futures and options markets.[2] These rules require FCMs to maintain, in segregated accounts, all of the money and other property deposited by customers to margin their futures and option positions on U.S. markets, as well as any funds accruing to such customers from open futures and option positions. The rules are intended to ensure that an FCM has readily available sufficient funds to meet its obligations, on a dollar-for-dollar basis, to its customers trading on U.S. futures and options markets at all times.

Rule 30.7 sets forth an FCM's obligation to secure funds of U.S.-domiciled customers trading on non-U.S. futures and options markets. Rule 30.7 requires an FCM to maintain in secured accounts funds and other property deposited by a U.S.-domiciled customer that represents required margin deposits for open futures and option positions on foreign markets, as well as any unrealized gains accruing on such open positions. The funds required to be segregated for customers trading on U.S. commodity markets pursuant to Section 4d(a)(2) and the funds required to be secured for customers trading on foreign commodity markets pursuant to Rule 30.7 hereinafter will be referred to jointly as the ''Segregated Amount.''

Section 4f(b) of the Act provides that in order to register as an FCM or IB a person must meet such minimum financial requirements as the Commission may by regulation prescribe. Commission rules that set forth the minimum financial and related reporting requirements for FCMs and IBs include Rules 1.10, 1.12, 1.16, 1.17, and 1.18. Commission Rules 1.10 and 1.16 set forth requirements for the periodic reporting of the financial condition of FCMs and IBs, while Commission Rule 1.12 requires ''early warning'' reporting of predefined events as they occur. The minimum requirements for the IB's or FCM's adjusted net capital, equity capital and subordinated agreements are set forth in Commission Rule 1.17. Rule 1.18 requires FCMs and IBs to prepare and to maintain formal adjusted net capital computations as of the close of business each month.[3]

The Commission's minimum financial requirements protect customers and other market participants by requiring FCMs and IBs to maintain minimum levels of liquid assets in excess of their liabilities to finance their business activities. In the event of a shortfall in the Segregated Amount, the Commission's minimum net capital requirement provides protection to customers by requiring FCMs to maintain a minimum level of assets that are readily available to be contributed to cover the shortfall. The minimum capital requirement also protects customers and market participants by ensuring that the FCM remains solvent while waiting for margin calls to be met.

II. Proposed Risk-Based Capital Requirement for FCMs

A. The Commission's Current Capital Requirement

The Commission's net capital requirement is set forth in Rule 1.17(a)(1)(i)(A)–(D) and requires an FCM to maintain adjusted net capital equal to, or in excess of, the greatest of the following:

a. $250,000;

b. Four percent of the Segregated Amount, less the market value of options purchased by customers for which the full premiums have been paid;

c. The amount of adjusted net capital required by a registered futures association of which the FCM is a member; [4] or

d. For FCMs that also are registered with the SEC as securities brokers or dealers, the amount of net capital required by SEC Rule 15c3–1(a).[5]

In addition to the Commission's minimum capital requirements, FCMs also are subject to minimum capital requirements adopted by the self-regulatory organizations (''SROs'') of which they are members.[6] The SROs' capital requirements are required to be no less stringent than the Commission's minimum capital requirement.[7]

[1] 7 U.S.C. 1 *et seq.* (2000).

[2] Commission regulations may be found at 17 CFR Ch. 1 (2002).

[3] In addition, FCMs are required by Rules 1.14 and 1.15 to maintain and to provide to the Commission certain information regarding affiliated entities.

[4] The NFA is a registered futures association that has adopted minimum capital rules for its member FCMs.

[5] 17 CFR 240.15c3–1(a).

[6] Rule 1.3(ee) defines an SRO as a contract market as defined in Rule 1.3(h) or a registered futures association under section 17 of the Act.

[7] For example, New York Mercantile Exchange (''NYMEX'') Rule 9.21 requires clearing members to maintain minimum net capital that is the greater of $5,000,000 or the minimum capital required by Rule 1.17.

The current capital rule generally has worked well as a measure of the minimum amount of capital an FCM needs in order to augment the Segregated Amount to provide protection for customer funds and to meet the FCM's responsibility of maintaining orderly markets. In recent years, however, the scope of and participants in the commodity business have changed. Trading is conducted on a 24-hour a day basis on markets worldwide. FCMs have become significant participants in this global marketplace as evidenced by increasing numbers of U.S. and foreign customers trading on U.S. and foreign markets through FCMs and the increasing amount of customer funds held by FCMs.[8] The types of participants in the marketplace also have shifted from primarily agricultural traders to highly sophisticated money managers and financial institutions trading a wide variety of products, with the greatest volume of trading being in interest rate and stock index contracts.

The framework for the current capital rule was developed in 1978 and now should be modernized to reflect these changes. The current capital rule does factor in the risk inherent in the positions carried by an FCM for its customers' accounts to the extent that the amount of capital required is based on a percentage of the Segregated Amount, which, in turn, is partly a function of the margin (or performance bond) required on open futures and option positions. There are, however, a number of material limitations on the current method used to calculate required net capital.

A primary limitation is that the Segregated Amount does not fully reflect the extent to which an FCM is exposed to commodity positions it carries for both customers and noncustomers.[9] For example, the Segregated Amount does not include funds held by an FCM on behalf of foreign-domiciled customers trading on foreign commodity markets, nor does it include funds held by an FCM on behalf of noncustomers trading on either U.S. or foreign futures and options markets. Furthermore, the Segregated Amount does not include letters of credit deposited as margin or reflect the additional risks posed by open positions in customer accounts that liquidate to a deficit. Finally, calculating minimum capital as a percentage of the Segregated Amount subjects an FCM to a higher requirement in situations where the FCM requires additional margin from customers or carries free credit balances for its customers, despite the risk reducing effect of holding higher levels of customer funds.

To address the concerns noted above and to conform the Commission's capital requirements to those implemented by the NFA, two exchanges and a clearing organization, the Commission is proposing to adopt a minimum capital requirement calculated as a percentage of the margin required on all domestic and foreign futures and option accounts carried by the FCM on behalf of customers and noncustomers, instead of as a percentage of the Segregated Amount.

B. Proposed Risk-Based Capital Requirement

1. Overview of the Proposed Risk-Based Capital Computation

Margin-based (or risk-based) capital rules have been adopted and put into effect by the Board of Trade Clearing Corporation (''BOTCC''), Chicago Board of Trade (''CBOT''), Chicago Mercantile Exchange (''CME''), and NFA. BOTCC, CBOT, and CME adopted risk-based components to their respective minimum capital requirements for clearing member firms effective January 1, 1998. NFA adopted a risk-based capital component to its minimum capital requirements for member FCMs effective October 31, 2000.

Based upon the effectiveness of these rules as implemented at these organizations, the U.S. commodity exchanges and NFA, through the Joint Audit Committee (''JAC''), have requested that the Commission amend its capital rule by eliminating the calculation based on the Segregated Amount and adopting a calculation based on the required maintenance margin levels for customer and noncustomer futures and option positions carried by an FCM.[10] An additional benefit to FCMs of adopting the proposed risk-based capital requirement is that it would simplify adjusted net capital reporting requirements for FCMs. Commission Rule 1.17 includes among the categories from which an FCM's required net capital is determined ''[t]he amount of adjusted net capital required by a registered futures association of which [the FCM] is a member.'' Because all registered FCMs that handle customer funds are required to be members of NFA, the NFA's adoption of a risk based capital requirement, which is modeled on the requirement implemented by BOTCC, CBT, and CME, has effectively required almost all FCMs to perform adjusted net capital computations that are based both on percentages of maintenance margin levels of futures and options positions and on percentages of the Segregated Amount.

U.S. commodity exchanges and numerous foreign commodity exchanges use the Standard Portfolio Analysis of Risk (''SPAN'') margining system for calculating margin requirements on futures and option positions. SPAN is a system developed and maintained by the CME that calculates maintenance margin levels in an account containing both futures and option positions on the basis of overall portfolio risk. Commodity exchanges attempt to set maintenance margin levels that exceed the one-day price change for 95 percent to 99 percent of the trading days based upon statistical analyses of day-to-day price changes over a varied number of trading days.[11]

The SPAN maintenance margin level has two components:

1. The risk component, which covers potential future losses in the portfolio value. Such losses would include a market move against a futures position or a short (written) option; and

2. The equity component (option premium, marked-to-the market daily), which reflects the asset represented by long option positions or the liability represented by short (written) option positions in the portfolio.

The proposal would set the minimum capital requirement at the aggregate of eight percent of the risk maintenance margin level on customer accounts and four percent of the risk maintenance margin level on noncustomer accounts. The equity component of the SPAN maintenance margin level would not be included in the capital computation. Furthermore, as more fully discussed below, the risk maintenance margin imposed on long option positions that were not hedging other futures or option positions could be excluded from the computation. Proprietary (*i.e.*, firm-owned) accounts would be excluded

[8] Based upon financial reports filed with the Commission, FCMs held on behalf of their customers approximately $30 billion as of September 1995 and approximately $69 billion as of April 2003.

[9] Noncustomer accounts are defined in Rule 1.17(b)(4) and generally are accounts of entities affiliated with the FCM and the accounts of certain employees of the FCM.

[10] The JAC is comprised of representatives of the audit and financial compliance departments of the SROs.

[11] For more detailed information on the SPAN margining system, see the report *Review of Standard Portfolio Analysis of Risk (''SPAN'') Margin System as implemented by the Chicago Mercantile Exchange, Board of Trade Clearing Corporation, and the Chicago Board of Trade,* prepared by the Commission's Division of Trading and Markets and issued in April 2001. The report is available on the Commission's Web site: *http://www.cftc.gov.*

from the risk-based capital computation, because such positions currently are included in the calculation of adjusted net capital to the extent that uncovered proprietary positions result in a charge or ''haircut'' to net capital based on clearinghouse or exchange margin requirements.[12] The proposed computation will hereinafter be referred to as ''Risk-Based Capital.''[13]

For purposes of the proposed rule, ''customer accounts'' would include the account of any customer as defined by Rule 1.17(b)(2), which includes customers as defined by Rule 1.3(k), option customers as defined by Rules 1.3(jj) and 32.1(c), and foreign futures and foreign option customers as defined by Rule 30.1(c), and also would include the accounts of foreign customers trading on foreign commodity exchanges. The term ''noncustomer account'' would continue to be defined by Rule 1.17(b)(4) as an account that is not included in the definition of either customer or proprietary account in Rule 1.17, and would also include noncustomer accounts for foreign domiciled persons trading on foreign exchanges. The term ''noncustomer'' generally refers to accounts of entities affiliated with an FCM, including certain employees and officers of an FCM.

Generally, there is no risk to the FCM associated with a long option position because the maximum potential loss is the full option premium, which is required to be paid by the customer at the inception of the transaction. As previously noted, however, SPAN computes the margin for an account on a portfolio basis and long option positions may hedge other futures and option positions in a portfolio, thereby reducing the total margin requirement on the portfolio. Accordingly, SPAN includes a risk maintenance margin component for long option positions to protect against a decrease in the market value of long options that may be hedging other futures and option positions.

The propsal would permit an FCM to deduct the risk maintenance margin on long options that were not hedging other futures or option positions from the Risk-Based Capital computation. The Commission, however, understands that, under current back office operating procedures, calculating the maintenance margin on specific long option positions included in a portfolio may require a certain amount of manual processing, which some FCMs may wish to forgo if the amount would not materially increase their minimum capital requirement. Accordingly, the rule as proposed would not prohibit an FCM from including the risk maintenance margin for long options that do not hedge other futures and option positions in its Risk-Based Capital computation, if it elected to do so.

The proposal would set the Risk-Based Capital requirement at eight percent of customer risk maintenance margin and four percent of noncustomer risk maintenance margin, which are the same percentages that have been implemented under the existing exchange and NFA risk-based capital rules. The lower four percent factor applied to risk margin requirements in noncustomers' accounts is based upon the beliefs of BOTCC, CBT, CME and the NFA that affiliates and employees pose less credit risk to FCMs and the clearing system.

If an FCM cannot determine the risk margin associated with cleared positions, the proposal would require the firm to apply the specified percentages to the total margin required by the exchange, clearing organization, other futures commission merchant or entity for the customer and noncustomer positions carried. This would be consistent with the approach taken by FCMs today for futures and option positions that they carry that are executed on foreign contract markets that do not use the SPAN margining system.

2. Accounts Included in the Risk-Based Net Capital Computation

Calculations of minimum required capital under the current method based on the Segregated Amount and the proposed Risk-Based Capital method would differ with respect to the types of accounts included in the calculation. These differences are summarized in the following table.

Are the following types of accounts factored into the calculation of required net capital?	Current segregated amount capital requirement	Proposed risk-based capital requirement
U.S.-domiciled customers trading on U.S. exchanges	Yes	Yes.
Foreign-domiciled customers trading on U.S. exchanges	Yes	Yes.
U.S.-domiciled customers trading on foreign exchanges	Yes	Yes.
Foreign-domiciled customers trading on foreign exchanges	No	Yes.
Accounts liquidating to a deficit	No	Yes.
Accounts with letters of credit for performance bond	No	Yes.
Noncustomer accounts	No	Yes.

The proposed Risk-Based Capital computation includes several types of accounts that affect the risk to an FCM inherent in commodity positions carried by its customers and noncustomers, and that are not included in the current Segregated Amount computation. Therefore, the Commission believes Risk-Based Capital may reflect the actual risk to FCMs better than the current Segregated Amount calculation of minimum required capital. Particularly, the proposed Risk-Based Capital computation would include futures and option positions carried by an FCM for noncustomers trading on U.S. and foreign commodity markets and foreign-domiciled customers trading on foreign futures and options markets, none of which currently are included in the minimum capital computation.

The proposed Risk-Based Capital computation also would include the risk maintenance margin on open futures and option positions that are carried in customer and noncustomer accounts that liquidate to a deficit. In such situations, an FCM is required to deposit its own funds into the segregated account in order to cover the customer's deficit. However, the capital requirement that is based upon the Segregated Amount does not reflect the positions of the customer that is in deficit.[14]

[12] *See* Commission Rule 1.17(c)(5)(x).

[13] The Commission also would amend the financial Form 1–FR–FCM if it were to adopt final rules for Risk-Based Capital.

[14] In computing its adjusted net capital, an FCM is required by Rule 1.17(c)(2)(i) to exclude from

Finally, customer and noncustomer accounts margined by letters of credit would be included in the Risk-Based Capital computation under the proposal. Such accounts currently have no effect on a firm's capital computation, because a letter of credit is not included in the Segregated Amount until the letter of credit is actually drawn upon.

3. Effect of Certain Events on the Risk-Based Net Capital Requirement

Certain events would have different effects on required capital under a Segregated Amount-based capital requirement as compared to the proposed Risk-Based Capital requirement. These differences are summarized in the following chart.

Event	Effect on net capital requirement	
	Segregated amount-based	Proposed risk-based rule
Excess margin deposited by a customer	Increase	No effect.
Excess margin withdrawn by customer	Decrease	No effect.
Firm increases margin required from a customer	Increase when customer deposits extra margin.	No effect.
Exchange increases margin requirements	Increase when funds are collected from customer.	Immediate increase.
Customer or noncustomer establishes riskier positions (indicated by increased risk margin requirement in trading account).	No immediate effect	Immediate increase.

Generally, Risk-Based Capital bases required levels of capital on the risks inherent in the futures and options positions that the FCM carries for customers and noncustomers. Conversely, the Segregated Amount computation is based upon the amount of funds the FCM is required to segregate or secure on behalf of its customers trading on U.S. and foreign commodity markets. Thus, an FCM that collects additional funds from its customer as a cushion for an increase in the market risks posed by the customer's portfolio is required by Commission rules to maintain a higher amount of capital, even though such additional funds reduce the FCM's overall exposure to a default by such customer. In contrast, an FCM that does not require a customer to deposit additional margin would not have an increase in its capital requirement, even though the firm may be more exposed to an increase in the market risk associated with the customer's portfolio. The proposed Risk-Based Capital computation, which is based upon a percentage of the risk maintenance margin on a portfolio of positions, would require the FCM to have higher minimum capital when the market risks associated with positions in the portfolio increases regardless of whether the FCM collected additional margin from the customer. Excess customer funds or margin held by an FCM would continue to be protected and regulated under the Commission's segregation requirements.

4. Impact of Adopting Risk-Based Capital

There were 169 registered FCMs as of April 30, 2003, of which 75 also were registered securities brokers or dealers with the SEC. The required regulatory capital for these 169 firms reflects an increase of more than $389 million, on a net basis, as a result of replacing adjusted net capital requirements that are currently based on the Segregated Amount with the risk-based capital requirements that are currently implemented by BOTCC, CBT, CME and the NFA. The following chart details the net increase for both sole FCMs and dually-registered firms.

	Effect of risk-based capital on total capital requirement	Total for all firms
Number of FCMs also registered as BDs with SEC:		
19	Increase	$244,688,814
2	Decrease	($415,526)
54	No change	0
Total: 75		
Number of FCMs not registered as BDs with SEC:		
17	Increase	$171,045,445
24	Decrease	($25,476,295)
53	No change	0
Total: 94		

Of the 75 dually-registered FCMs, 19 had an increase in their minimum capital requirements totaling approximately $245 million. Two firms realized a reduction in minimum net capital requirements totaling approximately $416,000. The minimum net capital for 54 firms did not change. The minimum capital requirement for these 54 firms was determined by SEC rules or the Commission's $250,000 minimum.

Of the 94 FCMs that were not dual registrants, 17 had a higher minimum capital requirement totaling approximately $171 million under Risk-Based Capital than under the Segregated Amount requirement. Minimum capital requirements decreased by approximately $25 million for 24 sole FCMs. Fifty-three FCMs had no change in their minimum capital requirements with the adoption of Risk-Based Capital. These 53 firms were subject to the Commission's $250,000 minimum.

III. Capital Charge for Undermargined Accounts

Commission Rule 1.17(c)(5)(viii) requires an FCM to take a capital charge for any customer account that is undermargined if the margin call issued

current assets the balance of any customer account that liquidates to a deficit or contains a debit ledger balance and such customer fails to answer a margin call or request for other deposits within one business day.

to the customer has not been answered by the third business day following the issuance of the call. Rule 1.17(c)(5)(ix) similarly requires a capital charge for noncustomer accounts if a noncustomer fails to answer a margin call by the second business day following the issuance of the call. When first adopted, these rules allowed collection periods of five business days for customer accounts and four business days for noncustomer accounts following the issuance of a margin call before a capital charge had to be taken. In 1980, the number of days was reduced to three business days for customer accounts and two business days for noncustomer accounts in recognition of the increased use of electronic communication for issuing and collecting margin calls.[15]

The Commission is now proposing to reduce the collection period before a capital charge would have to be taken to one business day following the issuance of a margin call for both customer and noncustomer accounts. The Commission is making this proposal in recognition of: (i) The advancements in electronic communications and the ability to transfer funds electronically which allow market participants to more easily meet a margin call; (ii) the increase in the number of products offered on futures markets since 1980, and the higher volatility associated with some of these products; and (iii) the expansion in the scope of FCM operations, including outside of the United States. In addition, the Commission believes the proposed amendment is consistent with the proposal to adopt a Risk-Based Capital computation.

An effective margining system is a key component of a sound financial risk management system. Such financial risk management should include a correlation between the time permitted for margin collection and the performance bonds or risk margin levels established for each contract. Because the Commission is proposing minimum capital requirements based on a percentage of risk maintenance margin required, not collected, a corresponding change to the allowed collection period for margin deficiencies is being proposed.

As noted previously, the SPAN margining system is intended to result in a level of maintenance margin that is expected to cover the probable one-day price move for a particular futures or option contract 95 percent to 99 percent of the time. Because price moves of that magnitude do not occur each day, the Commission believes it is appropriate to allow an FCM a reasonable period of time to collect the margin calls from customers and noncustomers prior to imposing a capital charge. However, with the increased use of electronic communications and electronic funds transfers, an FCM should be able to minimize the risks inherent in an account that has become undermargined. Reducing the period of time for collection to one business day from the date the margin call was issued for the purpose of taking charges against net capital would reflect the additional risk posed by a longer collection time than is necessary to transfer funds using current technology. It would also serve as an additional incentive to FCMs to issue margin calls and to collect margin promptly. An example of when a margin charge would have to be taken is as follows: on Monday a customer's or noncustomer's account becomes undermargined for the first time; the FCM makes a call to the customer or noncustomer for additional margin on Tuesday; if the margin deficiency is not collected by the close of business Wednesday, then any capital computation prepared as of the close of business Wednesday would include a capital charge for the margin deficiency.

[15] 45 FR 79416 (December 1, 1980). Under the current rule, if a customer account first experiences a margin deficiency on Monday, the FCM would issue a margin call to the customer on Tuesday. If the margin call had not been answered by the close of business on Friday, the FCM would be required to take a capital charge for its capital computation as of Friday for the amount of the margin deficiency on Monday.

IV. Financial Reporting Requirements for FCMs and IBs

A. Introduction

FCMs and IBs are required to be in compliance with the net capital rule at all times and to be able to demonstrate that compliance whenever requested to do so. Such close monitoring and awareness of capital positions is necessary in the high risk, high volatility futures trading business. Likewise, a sound financial surveillance program recognizes the need to monitor the financial condition of an FCM or IB through the regular collection of financial information. The Commission is proposing several amendments to Rules 1.10, 1.12, 1.16 and 1.18 that: (i) Reflect advances in technology that permit more rapid reporting, (ii) increase regulatory efficiency by harmonizing reporting requirements under comparable Commission and SEC rules, (iii) promote direct supervision of FCMs and IBs by SROs subject to Commission oversight, and (iv) streamline the Commission's reporting requirements by eliminating unnecessary filings. The proposed streamlined procedures and filing requirements are consistent with the oversight role envisioned for the Commission under the Commodity Futures Modernization Act of 2000 (''CFMA'') which includes among its stated purposes ''to transform the role of the [Commission] to oversight of the futures market'' and ''to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act''.[16]

B. Monthly Filing of Financial Reports by FCMs

The Commission conducts its monitoring of the financial condition of FCMs both directly and through coordination with the SROs. Pursuant to Commission Rule 1.52, an SRO must adopt, submit for Commission approval, and thereafter enforce minimum financial and related reporting requirements for its member FCMs.

Commission Rule 1.10 requires an FCM to file an unaudited Form 1–FR–FCM report on a quarterly basis with the Commission and with its designated self-regulatory organization (''DSRO'').[17] FCMs that also are registered as securities brokers or dealers may elect to file, in lieu of a Form 1–FR–FCM, a copy of their unaudited Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II or Part IIA (''FOCUS Report'').[18] FCM financial reports must be filed with the Commission and with an FCM's DSRO within 17 business days of the end of the fiscal quarter.

The Commission is proposing to amend Rule 1.10 to require each FCM to file an unaudited Form 1–FR–FCM or FOCUS Report with the Commission and with the FCM's DSRO as of the end of each month, including the FCM's fiscal year end. The FCM would be required to file the financial reports within 17 business days of the end of each month.

When the Commission initially adopted its financial reporting rules, quarterly reporting by FCMs was determined to be sufficient for adequate and timely monitoring of the FCM's financial condition. Commodity exchanges and NFA, however, have

[16] Section 2 of the CFMA, Pub. L. 106–554, Appendix E, 114 Stat. 2763 (2000).

[17] The DSRO is the self-regulatory organization that, pursuant to Commission Rule 1.52, is primarily responsible for monitoring an FCM's compliance with minimum financial and related reporting requirements, receiving and reviewing an FCM's financial reports, and auditing the FCM's books and records.

[18] The requirements for the FOCUS Report are set forth in SEC Rule 17a–5.

since recognized the need for more frequent filing of financial information by FCMs due to the substantial increase in the volume of business conducted in the futures and options markets and the high volatility of the markets in which FCMs operate. The NFA and CME currently require FCMs for which they are DSRO to file financial reports on a monthly basis.[19] Because the Commission receives copies of all financial reports filed at the SRO level, for most FCMs the Commission already receives monthly financial reports.

The Commission believes it is appropriate to amend its rules to require FCMs to report their financial condition monthly. Monthly filing would permit closer financial surveillance for any remaining entities that file quarterly, and would be consistent with the rules of the SROs that have already caused monthly reporting to be widely required. More frequent reporting allows SROs and the Commission to identify adverse financial trends sooner than is possible with quarterly filing. In addition, since most FCMs currently file monthly financial reports with their DSRO, a Commission regulation requiring FCMs to file monthly financial reports with the Commission and with the applicable DSRO should pose minimal additional burden on FCMs. Furthermore, an FCM's preparation of a monthly financial report would satisfy its requirement to prepare a monthly net capital computation under Rule 1.18.[20]

C. Requirements for Oath or Affirmation Filed With Form 1–FR

The Commission also is proposing to ease Form 1–FR filing requirements for FCMs and IBs by expanding the list of persons from whom the Commission would accept the oath or affirmation that is required by Rule 1.10(d)(4).[21] Pursuant to this rule, the individual providing the oath or affirmation attests to the truth and accuracy of the information provided in the Form 1–FR, to the best knowledge and belief of the individual. The oath or affirmation must be provided by one of the following individuals: If the FCM or IB is a sole proprietorship, the sole proprietor; if the FCM or IB is a partnership, a general partner; or if the FCM or IB is a corporation, the chief executive officer or chief financial officer.[22]

The list of individuals that appears in Rule 1.10(d) also appears in other Commission regulations that designate permitted signatories for required filings by commodity pool operators (''CPOs'') and commodity trading advisers (''CTAs''). The Commission recently has issued a release that proposes to revise these rules for CPOs and CTAs, as the ''existing list may be unnecessarily restrictive in that it leaves no room for other organizational structures under which CPOs and CTAs operate—*e.g.*, limited liability companies.''[23] The list in Rule 1.10(d)(4) similarly does not address all organizational structures under which FCMs and IBs operate. The Commission is therefore proposing to amend the rule to provide that the oath or affirmation may be made by either (i) a representative duly authorized to bind the FCM or IB, or, (ii) if the FCM or IB also is registered with the SEC as a securities broker or dealer, a representative authorized to file the FOCUS Report for the broker or dealer under SEC Rule 17a–5 (17 CFR 240.17a–5).

D. Extensions of Time To File Unaudited and Audited Financial Reports

Commission Rule 1.10(f)(1) provides that if an FCM or IB determines that it cannot file its unaudited Form 1–FR prior to the due date, it may file an application with the Commission for an extension of time to a specified date, which may not be more than 90 days after the original due date. The FCM or IB also is required to file a copy of the application for extension with its DSRO.

In addition to unaudited filings, Commission Rule 1.10 also requires that FCMs and IBs file audited financial statements and schedules on an annual basis. To request an extension of time for filing the annual audited financial report, the FCM or IB may file an application with the Commission pursuant to Commission Rule 1.16(f). Notice of the application must be filed by the FCM or IB with its DSRO.

Several exchanges have adopted rules or procedures to process requests from their member FCMs for extensions of time to file unaudited financial statements. In addition, in 1993 the SEC amended its rules to provide authority to the designated examining authority (''DEA'') of a broker or dealer to grant or deny a request for extension of time to file its unaudited FOCUS Report.[24] This has resulted in some requests for filing extensions being reviewed and acted upon by the Commission, DSRO staff and DEA staff.

The Commission proposes to provide greater clarity and uniformity to this area by amending Rules 1.10(f) and 1.16(f). The amended rules would provide that the DSRO of an FCM or IB may approve an application for an extension of time to file an unaudited or audited financial report, provided that the FCM or IB files with the Commission a copy of its DSRO's written approval or denial of the request to extend the time for filing the Form 1–FR. A registrant must file a copy of its application, and a copy of any notices it receives from the designated self regulatory organization to approve or deny its application, with the regional office of the Commission where the FCM or IB is required to file its unaudited or audited financial statements.

The Commission also is proposing that if the FCM or IB also is registered as a securities broker or dealer with the SEC (a ''dual registrant'') and has filed with its DEA a request for an extension of time to file its unaudited monthly FOCUS Report or audited annual financial statements, no separate application to its applicable DSRO would be required, but the dual registrant would be required to file with its DSRO and the Commission a copy of the application made to the FCM's or IB's DEA. Immediately upon the DEA's approval or denial of the request to extend the time for filing the unaudited monthly FOCUS Reports or audited annual financial statements, the dual registrant would be required to file a copy of such approval or denial with the Commission and its DSRO.

E. Change in Fiscal Year End

Commission Rule 1.10(e) provides that an FCM or IB must continue to use its elected fiscal year, unless a change is approved upon written application to the Commission and a notice of the change is filed with the FCM's or IB's DSRO. The Commission generally has approved such applications provided that the applicant files certified financial statements within 15 months of the as of date of its last certified

[19] Section 1(b) of NFA Rulebook and CME Rule 970C.1.

[20] Rule 1.18(b) requires an FCM to prepare and to maintain a formal computation of its net capital as of the close of business each month. The formal net capital computation must be completed within 17 business days of the end of the month.

[21] Not all IBs file a Form 1–FR-IB. An IB that operates pursuant to an FCM guarantee agreement that satisfies the requirements of Rule 1.10(h) is exempt from filing the form, which otherwise would be required from the IB pursuant to Rule 1.10(b)(2)(i). Generally, at least two-thirds of registered IBs operate pursuant to a guarantee agreement.

[22] Rule 1.10(d)(4) also provides that in the case of a Form 1–FR filed with the Commission via electronic transmission, such transmission must be accompanied by the Commission-assigned Personal Identification Number of the authorized signer and such Personal Identification Number will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation.

[23] 68 FR 12622 (March 17, 2003).

[24] 58 FR 45838 (August 31, 1993).

financial statements and the certified financial statements cover the full period from the as of date of the previous certified financial statements. In addition, SEC rules provide for DEA approval in connection with changes to the fiscal year or ''as of'' date for the annual audited financial statements of a broker or dealer.[25]

The Commission is proposing to amend Rule 1.10(e) to provide that a DSRO may approve an FCM's or IB's application for a change in fiscal year, provided that the FCM or IB files with the Commission a copy of its application, and also files a copy of its DSRO's written approval or denial of a change in fiscal year end, in order to permit Commission staff to know when certified annual financial reports are to be filed.[26] The Commission also is proposing that any dual registrant that has filed a notice or application with its DEA to request a change to its fiscal year or ''as of'' date would not need to file a separate application with its DSRO, but the dual registrant would need to file with its DSRO and the Commission a copy of the notice or application filed by the registrant with its DEA. Further, immediately upon the approval or denial of the request to change the dual registrant's fiscal year or ''as of'' date, the dual registrant would be required to file a copy of such approval or denial with the Commission and its DSRO.

F. Filings by Introducing Brokers of Form 1–FR With NFA

Commission Rule 1.10(b) requires an IB to file with the Commission and with NFA on a semiannual basis an unaudited Form 1–FR–IB, or its FOCUS Report if the IB is also registered with the SEC as a securities broker or dealer. The IBs are required to file the unaudited financial reports within 17 business days of the as of date of the reports.

The Commission currently has direct access to a database maintained by NFA that includes the financial information reported by IBs on a Form 1–FR–IB or FOCUS Report. Therefore, the Commission is proposing to amend Rule 1.10(c) to provide that an IB must file an unaudited Form 1–FR–IB solely with NFA.[27]

Furthermore, the Commission invites comment on whether, and under what conditions, it should amend its rules to permit IBs to file annual certified financial statements solely with NFA. NFA would input the financial information into the database and would provide copies of the annual reports to the Commission upon request.

V. Early Warning Requirements

Commission Rule 1.12 requires an FCM to file notices and meet other requirements if certain predefined financial events occur that may raise concerns regarding the FCM's ability to continue its normal operations and to safeguard customer funds. The requirements in Rule 1.12 are generally referred to as ''early warning requirements.''

A. Adjusted Net Capital That Is Below the Early Warning Level

An FCM whose adjusted net capital falls below a level specified in Rule 1.12(b), the early warning level, is required to meet the notice and monthly filing requirements that are set forth in 1.12(b)(4).[28] The FCM must file written notice within five business days with the Commission and its DSRO, and the FCM must also file a Form 1–FR–FCM or FOCUS Report as of the close of business for the month in which the FCM's adjusted net capital is less than the required early warning level. Rule 1.12(b) further requires the FCM to continue to file monthly Forms 1–FR–FCM or FOCUS Reports, as opposed to filing quarterly reports that would ordinarily be required under Rule 1.10, until the end of a period of three successive months during which the adjusted net capital of the FCM remains at a level equal to or greater than the early warning level.

The Commission is proposing to eliminate the monthly filing requirement in Rule 1.12(b), because this provision will become unnecessary if Rule 1.10 is amended to require that all FCMs file monthly financial reports with the Commission and with their DSRO. The Commission also is retaining the requirement under Rule 1.12(b) that the FCM provide notice to the Commission and to the firm's DSRO that its adjusted net capital has fallen below 150 percent of its minimum capital requirement. In addition, the Commission is proposing to amend Rule 1.12(b) to provide that the early warning notice be filed with the Commission and with the firm's DSRO within 24 hours, instead of within five business days. This amendment would make the Commission's rule consistent with the SEC's early warning rule, which also requires that notice be provided promptly, within 24 hours.[29]

The JAC has requested that the Commission eliminate the early warning requirement since FCMs will be required to file monthly financial reports under the amended rules. The Commission, however, is concerned that eliminating the early warning notice requirement will diminish the DSRO's and Commission's ability to react promptly to potential financial crises at an FCM that has experienced a decrease in capital. The Commission, however, invites interested parties to comment on this aspect of the proposal, including on whether the 150 percent early warning level is appropriate or whether it should be adjusted or eliminated.

B. Failure To Maintain Current Books and Records and of Material Inadequacy in Internal Accounting Controls

Rule 1.12(c) requires an FCM or IB to notify the Commission if it fails to maintain current books and records that it is required to keep pursuant to Commission regulations. The FCM or IB must give such notice on the same day that the event occurs that causes it to not maintain current books and records. The notice must specify the books and records that have not been made or that are not current. The FCM or IB also is required to file a written report setting forth the steps taken, or that are being taken, to correct the situation within five business days of filing the initial notice.

Rule 1.12(d) requires an FCM or IB to notify the Commission within three business days of discovering or being

[25] SEC Rule 17a–5(m) requires that a securities broker or dealer notify its DEA and the SEC offices located in Washington, DC and the region where the broker or dealer has its principal place of business ''in the event any broker-dealer finds it necessary to change its fiscal year.'' The notice must contain a detailed explanation for the change, and any change in the ''as of'' date for the annual audit financial statements must be approved by the DEA under SEC Rule 17a–5(d)(1)(i).

[26] Rule 1.10(b)(1)(ii) requires that FCMs file reports that are ''as of the close of its fiscal year'' and filed ''no later than 90 days after the close'' of the fiscal year, or, if the FCM is also registered as a securities broker or dealer, no later than the 60 day period provided under SEC Rule 17a–5(d)(5).

[27] The proposed amendment will be similar to existing provisions in 1.10(c) that provide that guarantee agreements need be filed solely with the NFA.

[28] The level of adjusted net capital that is required under Rule 1.12(b) equals the greatest of the following:

a. $375,000;

b. Six percent of the Segregated Amount, less the market value of options purchased by customers for which the full premiums have been paid;

c. 150 percent of the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or

d. for FCMs that also are registered with SEC as securities brokers or dealers, the amount of net capital required by SEC Rule 17a–11(b).

The Commission is proposing a technical amendment to Rule 1.12(b) to correct the reference to SEC Rule 17a–11(b), which the SEC has redesignated as 17a–11(c). 58 FR 37655 (July 13, 1993.)

[29] SEC Rule 17a–11(c), (17 CFR 240.17a–11(c)).

notified by an independent public accountant of a material inadequacy in its accounting system, internal accounting controls, procedures for safeguarding customer and firm assets, or other systems. The FCM or IB also is required to file a written report setting forth the steps taken, or that are being taken, to correct the material inadequacy within five business days of the original notice.

The Commission is proposing to amend Rule 1.12(c) and (d) so that the time frames for reporting a failure to maintain current books and records and for reporting a material inadequacy in accounting systems are consistent with the time frames established by SEC rules for securities brokers and dealers. The Commission and SEC have attempted, to the extent possible, to develop capital and financial reporting rules that are consistent in order to simplify and to clarify the rules and procedures for firms that are dually-registered as securities brokers or dealers and FCMs or IBs. SEC Rule 17a–11(d) and (e) are analogous to Commission Rule 1.12(c) and (d). SEC Rule 17a–11(d), however, requires a broker or dealer to transmit within 48 hours a report to the SEC stating what the broker or dealer has done or is doing to correct the situation that has caused it to fail to maintain current books and records. SEC Rule 17a–11(e) requires a broker or dealer to notify the SEC within 24 hours of discovering a material inadequacy in its accounting systems and to transmit a report to the SEC within 48 hours of such discovery.

The Commission believes that financial surveillance would be improved if all FCMs and IBs, whether dual registrants or not, were required to file notices with the Commission in accordance with the earlier thresholds required by the SEC. The time frames in the Commission's rules were adopted in 1978 and have not been amended since then to reflect advances in technology that may help ensure more prompt reporting. The Commission further believes that FCMs and IBs and brokers and dealers would benefit if the Commission's and SEC's rules were harmonized so that the same time frames apply for compliance with both agencies.

VI. Equity Capital and Subordinated Agreements

The Commission also is proposing to make conforming changes to Rule 1.17(e) and Rule 1.17(h), as these rules also include adjusted net capital requirements that are based upon percentages of the Segregated Amount. Pursuant to these rules, an FCM[30] must maintain adjusted net capital in excess of its minimum adjusted net capital requirement in order to undertake or avoid undertaking certain actions in connection with the FCM's equity capital and subordination agreements.[31] Thus, for example, Rule 1.17(e) prohibits the withdrawal of equity capital from an FCM if, among other conditions, the FCM's adjusted net capital after giving effect to such withdrawals would be less than the greatest of:

a. 120 percent of the minimum dollar amount in 1.17(a)(1)(i)(A) or (a)(1)(ii)(A);[32]

b. Six percent of the Segregated Amount;

c. 120 percent of the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or

d. For FCMs that also are registered with the SEC as securities brokers or dealers, the amount of net capital required by SEC Rule 15c3–1(e).

Similarly, several paragraphs of Rule 1.17 that address subordination agreements—(h)(2)(vi)(C) (restricting reductions of the unpaid principal balance under a secured demand note subject to a subordination agreement); (h)(2)(vii)(A) (restricting prepayments) and (B) (restricting special prepayments);[33] (h)(2)(viii)(A) (requiring suspension of repayment); (h)(3)(ii) (requiring notice of maturity or accelerated maturity) and (h)(3)(v) (restricting use of temporary subordinations)—also include adjusted net capital calculations that refer to specified percentages of the Segregated Amount.[34] The required percentages range from six percent to ten percent, all of which exceed the percentage (four percent) applied to the Segregated Amount for purposes of the minimum adjusted net capital requirement under Rule 1.17(a).

The Commission therefore is proposing to amend paragraphs (e) and (h) of Rule 1.17 to conform to the risk-based capital requirement that the Commission is proposing for Rule 1.17(a). The proposed amendments to paragraphs (e) and (h) of Rule 1.17 would: (i) Eliminate calculations based on the Segregated Amount; (ii) adopt calculations based on the required margin for customer and noncustomer futures and option positions carried by an FCM; and (iii) apply percentage requirements that reflect the same proportional increase currently required under 1.17(e) and (h). Thus, for example, where Rule 1.17(e) included a calculation based upon six percent of the Segregated Amount, the Commission proposes to eliminate this calculation and require 150 percent of the Risk-Based Capital amount that the Commission is proposing for FCMs under Rule 1.17(a)(1)(B).

The Commission also is proposing to ''grandfather'' in agreements that, prior to the effective date of the proposed amendments, have been determined to be satisfactory subordination agreements pursuant to Rule 1.17(h). The Commission is proposing to amend paragraph (h)(3)(vii) of Rule 1.17 to provide that any such agreement would continue to be deemed satisfactory until its maturity, so long as the agreement is not amended or renewed. If for any reason the agreement is amended or renewed, such amended or renewed agreement must comply with Rule 1.17 as amended.[35]

[30] Both FCMs and IBs must maintain specified levels of adjusted net capital for purposes of the actions that are either restricted or required under Regulations 1.17(e) and 1.17(h). Only FCMs, however, are required to include in their capital computations the funds that FCMs are required to segregate and set aside for the FCMs' customers. The discussion in this proposal is therefore limited to FCMs, since the proposed change relates to adjusted net capital computations that are based on funds required to be segregated and set aside for the FCMs' customers.

[31] Subordination agreements that meet the requirements of Rule 1.17(h) will be deemed ''satisfactory subordination agreements,'' thus permitting an FCM, pursuant to Rule 1.17(c)(4)(i), to exclude the subordinated debt that is governed by these agreements as liabilities when computing net capital.

[32] The Commission redesignated paragraph (a)(1)(ii)(A) of Rule 1.17 as paragraph (a)(1)(iii)(A) in 2001. 66 FR 53510 (October 23, 2001). The Commission therefore also proposes a technical amendment to Rule 1.17(e) to correct the reference to 1.17(a)(1)(ii)(A) to read 1.17(a)(1)(iii)(A).

[33] ''Special prepayments'' is the term used by the rule for prepayments made under revolving subordinated agreements. Because revolving agreements may permit prepayments at any time, such payments ordinarily would conflict with Rule 1.17(h)(2)(vii) (prohibiting prepayment within one year of the date upon which the governing subordination agreement became effective.) In 1982, the Commission determined that special prepayments would be acceptable if subject to various conditions, including a higher level of adjusted net capital (10 percent of segregated funds) than is required for prepayments that are subject to the one-year restriction (7 percent of segregated funds.) 47 FR 22352 (May 24, 1982).

[34] The cited paragraphs contain references to 1.17(a)(1)(ii)(A), which has been redesignated. (*See* discussion in footnote 31 of this release.) The Commission is proposing a technical amendment to change the reference to read as 1.17(a)(1)(iii)(A).

[35] Rule 1.17(h)(3)(vii) presently applies to satisfactory subordination agreements that were entered into prior to the date that Rule 1.17(h) first became effective (December 20, 1978). The Commission provided a period of up to five years for such agreements to come into compliance with Rule 1.17(h), and this period has long since expired. The Commission therefore is also proposing technical amendments to eliminate provisions in Rule 1.17(h)(3)(viii) that are applicable to

Continued

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[36] The Commission has determined previously that FCMs are not small entities for the purpose of the RFA.[37] With respect to IBs, the Commission has determined to evaluate within the context of a particular rule proposal whether all or some IBs would be considered ''small entities'' for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on IBs of any such rule at that time.[38] Several of the proposed amendments would apply to FCMs only and therefore would have no economic impact on IBs (proposed amendments to Regulations 1.12(b), 1.17(a), 1.17(c), 1.17(e) and 1.17(h)). The proposed amendments to Regulations 1.10, 1.16 and 1.18 would reduce reporting requirements applicable to IBs, because financial reports that the IB must now file with both the Commission and the NFA would be filed with the NFA only. Proposed amendments to Regulation 1.12, which would shorten reporting time frames to the same periods required by comparable SEC rules, should have no economic impact on an IB that is also registered as a securities broker or dealer with SEC. Moreover, the advances in technology since 1978 would reduce the effect, if any, of the proposed Rule 1.12 amendments on those IBs that are not registered with the SEC. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on the significance of the economic impact of the proposed rules, if any, on IBs.

B. Paperwork Reduction Act

The proposed rulemaking includes information collection requirements as a result of the proposed amendment to Regulation 1.10, which would require FCMs to prepare and file unaudited financial reports on a monthly rather than a quarterly basis. The Paperwork Reduction Act of 1995 (''PRA'')[39] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget (''OMB'') for its review.

Collection Of Information. (Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038–0024.)

FCMs currently prepare and file quarterly unaudited financial reports under Rule 1.10, and they also prepare and file monthly capital computations under Rule 1.18. Under the proposed amendment to Rule 1.10, FCMs would file unaudited financial reports on a monthly basis, which would also satisfy the existing monthly reporting requirement of Rule 1.18. The Commission has therefore determined that the proposed amendments to Rule 1.10 and Rule 1.18 would increase by 537 hours the total annual reporting burden associated with the above-referenced collection of information, which has been approved previously by OMB.

The estimated burden of the proposed amendments to Rule 1.10 and Rule 1.18 was calculated as follows:

The burden associated with Rule 1.10 is expected to be 5,577 hours as a result of the proposed amendment to Rule 1.10, which represents an increase of 3,687 hours:

Estimated number of respondents: 169.

Reports annually by each respondent: 12.

Total annual responses: 2,028.

Estimated average number of hours per response: 2.75.

Annual reporting burden: 5,577.

The existing burden associated with Commission Rule 1.18 is expected to decline to zero as a result of the proposed amendment to Rule 1.18, which represents a decrease of 3,150 hours.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418–5160. The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the

satisfactory subordination agreements that were entered into prior to December 20, 1978.

[36] 47 FR 18618 (April 30, 1982).

[37] 47 FR at 18619.

[38] 47 FR at 18618, 18620.

[39] 44 U.S.C. 3507(d).

Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed rulemaking consists of several proposed amendments to regulations pertaining to the minimum financial and related reporting requirements for FCMs and IBs.[40] The Commission is considering the costs and benefits of these various proposed rules in light of the specific provisions of section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed amendments to reporting requirements provide the benefit of aiding the Commission and DSROs to monitor the financial condition of futures intermediaries and to protect the customers of those firms and the markets. The Commission anticipates that the costs of compliance with the proposed reporting requirements would be minimized by proposed amendments to streamline filing requirements. In addition, the proposed rules would ''grandfather'' in existing satisfactory subordination agreements, meaning that FCMs or IBs would incur no costs to comply with proposed amendments to Rule 1.17, unless such agreements would be amended or renewed for other reasons.

2. *Efficiency and competition.* As stated above, the Commission anticipates that the proposed amendments will benefit efficiency by eliminating duplicate filings and otherwise streamlining reporting requirements for FCMs and IBs. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on competition in the futures and options markets.

3. *Financial integrity of futures markets and price discovery.* The proposed amendments contribute to the benefit of ensuring that FCMs and IBs can meet their financial obligations to customers and other market participants, thus contributing to the financial integrity of the futures and options markets as a whole. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the price discovery function of such markets.

4. *Sound risk management practices.* The proposed capital standards seek to reflect appropriately the level of risk that different activities and obligations of FCMs and IBs may pose to their financial condition. The proposed amendments may therefore contribute to the sound risk management practices of futures intermediaries.

5. *Other public interest considerations.* The Commission also believes that the proposed rules are beneficial in that they harmonize Commission and SEC rules with respect to time frames for reporting conditions that may be potentially adverse to the financial condition of the FCM or IB.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

For the reasons presented above, 17 CFR Part 1 is proposed to be amended as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.10 is proposed to be amended by:

a. Adding the word ''monthly'' before the words ''financial reports'' and removing the parenthetical phrase in paragraph (b)(1)(ii);

b. Removing the last sentence of paragraph (e)(1); and

c. Removing paragraph (f)(2) and

d. Revising paragraphs (b)(1)(i), (b)(2)(i), (c), (d)(4), (e)(2), and (f)(1) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(b) *Filing of financial reports.* (1)(i) Except as provided in paragraphs (b)(3) and (h) of this section, each person registered as a futures commission merchant must file a Form 1–FR–FCM as of the close of business each month. Each Form 1–FR–FCM must be filed no later than 17 business days after the date for which the report is made.

* * * * *

(2)(i) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1–FR–IB semiannually as of the middle and the close of each fiscal year unless the introducing broker elects, pursuant to paragraph (e)(1) of this section, to file a Form 1–FR–IB semiannually as of the middle and the close of each calendar year. Each Form 1–FR–IB must be filed no later than 17 business days after the date for which the report is made.

* * * * *

(c) *Where to file reports.* (1) A report filed by an introducing broker pursuant to paragraph (b)(2)(i) of this section need be filed only with, and will be considered filed when received by, the National Futures Association. Other reports provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office) and by the designated self-regulatory organization, if any; and reports required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association and by the regional office of the Commission with jurisdiction over the state in which the applicant's principal place of business is located (except that an applicant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office).

(2) Any report filed pursuant to paragraph (b)(1), (b)(2), or (b)(4) of this section or § 1.12(a) which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a Commission-assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission, if the futures commission

[40] Section 4f(b) of the Act prohibits persons from becoming registered as FCMs or IBs if they do not meet the minimum financial requirements set forth in either the Commission's regulations or in such Commission-approved requirements as may be established by the contract markets and derivatives transaction execution facilities of which the FCM or IB is a member.

merchant, introducing broker or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report.

(3) Any guarantee agreement entered into between a futures commission merchant and an introducing broker in accordance with the provisions of this section need be filed only with, and will be considered filed when received by, the National Futures Association.

(d) * * *

(4) Attached to each Form 1–FR filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1–FR is true and correct. The oath or affirmation must be made by:

(i) a representative duly authorized to bind the applicant or registrant; or

(ii) if the registrant or applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, by the representative authorized under § 240.17a–5 of this title to file for the securities broker or dealer its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, part II or part IIA. In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established by the Commission, such transmission must be accompanied by the Commission-assigned Personal Identification Number of the authorized signer and such Personal Identification Number will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

(e) * * *

(2) (i) A registrant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year has been approved pursuant to this paragraph (e)(2).

(ii) A registrant may file with its designated self-regulatory organization an application to change its fiscal year, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the designated self regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from the designated self regulatory organization to approve or deny the registrant's application to change its fiscal year. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(iii) A registrant that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with its designated self-regulatory organization copies of any notice or application filed with its designated examining authority, pursuant to § 240.17a–5(d)(1)(i) of this title, for a change in fiscal year or ''as of'' date for its annual audited financial statement. The registrant must also file immediately with the designated self regulatory organization and the Commission copies of any notice it receives from its designated examining authority to approve or deny the registrant's request for change in fiscal year or ''as of'' date. Upon the receipt by the designated self-regulatory organization and the Commission of copies of any such notice of approval, the change in fiscal year or ''as of'' date referenced in the notice shall be deemed approved under this paragraph (e)(2).

(iv) Any copy that under this paragraph (e)(2) is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (except that such a notice of approval for a registrant under the jurisdiction of the Commission's Western Regional Office must be filed with the Commission's Southwestern Regional Office), and any copy or application to be filed with the designated self-regulatory organization shall be filed at its principal place of business.

(f) *Extension of time for filing uncertified reports.* (1) In the event a registrant finds that it cannot file its Form 1–FR, or, in accordance with paragraph (h) of this section, its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, part II or part IIA (FOCUS report), for any period within the time specified in paragraphs (b)(1)(i) or (b)(2)(i) of this section without substantial undue hardship, it may request approval for an extension of time, as follows:

(i) A registrant may file with its designated self-regulatory organization an application for extension of time, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the designated self-regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from the designated self regulatory organization to approve or deny the registrant's request for extension of time. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(ii) A registrant that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with its designated self-regulatory organization a copy of any application that the registrant has filed with its designated examining authority, pursuant to § 240.17–a5(l)(5) of this title, for an extension of time to file its FOCUS report. The registrant must also file immediately with the designated self-regulatory organization and the Commission copies of any notice it receives from its designated examining authority to approve or deny the requested extension of time. Upon receipt by the designated self-regulatory organization and the Commission of copies of any such notice of approval, the requested extension of time referenced in the notice shall be deemed approved under this paragraph (f)(1).

(iii) Any copy that under this paragraph (f)(1) is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file the required copies with the Commission's Southwestern Regional Office) (*See* § 1.16(f) for extension of the time for filing certified financial statements.)

3. Section 1.12 is proposed to be amended by:

a. Revising paragraphs (b)(1), (b)(2), (b)(4), (c) and (d), and

b. Removing the words ''telegraphic or'' from paragraphs (e), (f)(1), (f)(2), (f)(3), (f)(4), (f)(5)(i), and (h) to read as follows:

§ 1.12. Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(1) 150 percent of the minimum dollar amount required by paragraph (a)(1)(i)(A) of § 1.17;

(2) 150 percent of the amount required by paragraph (a)(1)(i)(B) of § 1.17;

(3) * * *

(4) For securities brokers or dealers, the amount of net capital specified in Rule 17a–11(c) of the Securities and Exchange Commission (17 CFR 240.17a–11(c)), must file written notice to that effect as set forth in paragraph (i)

of this section within twenty-four (24) hours of such event.

(c) If an applicant or registrant at any time fails to make or keep current the books and records required by these regulations, such applicant or registrant must, on the same day such event occurs, provide facsimile notice of such fact, specifying the books and records which have not been made or which are not current, and within forty-eight (48) hours after giving such notice file a written report stating what steps have been and are being taken to correct the situation.

(d) Whenever any applicant or registrant discovers or is notified by an independent public accountant, pursuant to § 1.16(e)(2) of this chapter, of the existence of any material inadequacy, as specified in § 1.16(d)(2) of this chapter, such applicant or registrant must give facsimile notice of such material inadequacy within twenty-four (24) hours, and within forty-eight (48) hours after giving such notice file a written report stating what steps have been and are being taken to correct the material inadequacy.

4. Section 1.16 is proposed to be amended by:

a. Revising paragraph (f)(1), and

b. Removing paragraph (f)(2) and redesignating paragraph (f)(3) as paragraph (f)(2), as follows:

§ 1.16. Qualifications and reports of accountants.

* * * * *

(f) *Extension of time for filing audited reports.* (1) In the event a registrant finds that it cannot file its certified financial statements and schedules for any year within the time specified in § 1.10 without substantial undue hardship, it may request approval for an extension of time, as follows:

(i) A registrant may file with its designated self-regulatory organization an application for extension of time, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the designated self-regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from the designated self regulatory organization to approve or deny the registrant's request for extension of time. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(ii) A registrant that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with its designated self regulatory organization a copy of any application that the registrant has filed with its designated examining authority, pursuant to § 240.17–a5(*l*)(1) of this title, for an extension of time to file audited annual financial statements. The registrant must also file immediately with the designated self-regulatory organization and the Commission copies of any notice it receives from its designated examining authority to approve or deny the requested extension of time. Upon receipt by the designated self-regulatory organization and the Commission of copies of any such notice of approval, the requested extension of time referenced in the notice shall be deemed approved under this paragraph (f)(1).

(iii) Any copy that under this paragraph (f) is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file the required copies with the Commission's Southwestern Regional Office).

5. Section 1.17 is proposed to be amended by:

a. revising paragraphs (a)(1)(i)(B), (b)(4), (e)(1)(ii), (h)(2)(vi)(C)(1) and (2), (h)(2)(vii)(A)(1) and (2), (h)(2)(vii)(B)(1) and (2), (h)(2)(viii)(A)(1) and (2), (h)(3)(ii)(A) and (B), (h)(3)(v)(A) and (B) and (h)(3)(vii);

b. adding new paragraphs (b)(7) and (b)(8);

c. revising the words ''three business days'' to read ''one business day'' in both the first and second sentences of paragraph (c)(5)(viii);

d. revising the words ''three business days'' to read ''one business day'' in both the first and second sentences of paragraph (c)(5)(ix); and

e. revising the reference to ''(a)(1)(ii)(A)'' to read ''(a)(1)(iii)(A)'' in paragraph (e)(1)(i) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a)(1)(i) * * *

(B) The futures commission merchant's risk-based capital requirement computed as follows:

(1) Eight percent of the total risk margin requirement (as defined in § 1.17(b)(8)) for all futures and options on futures positions carried by the futures commission merchant in customer accounts (as defined in § 1.17(b)(7)), plus

(2) Four percent of the total risk margin requirement (as defined in § 1.17(b)(8)) for all futures and options on futures positions carried by the futures commission merchant in noncustomer accounts (as defined in § 1.17(b)(4)).

* * * * *

(b) * * *

(4) ''Noncustomer account'' means a commodity futures or option account carried on the books of the applicant or registrant which is either:

(i) An account that is not included in the definition of customer (as defined in § 1.17(b)(2)) or proprietary account (as defined in § 1.17(b)(3)), or

(ii) An account for a foreign-domiciled person trading futures or options on a foreign board of trade, and such account is a proprietary account as defined in § 1.3(y) of this title, but is not a proprietary account as defined in § 1.17(b)(3).

* * * * *

(7) ''Customer account'' means a commodity futures or option account carried on the books of the applicant or registrant which is either:

(i) An account that is included in the definition of customer (as defined in § 1.17(b)(2)), or

(ii) An account for a foreign-domiciled person trading on a foreign board of trade, where such account for the foreign-domiciled person is not a proprietary account (as defined in § 1.17 (b)(3)) or a noncustomer account (as defined in § 1.17(b)(4)(ii)).

(8) ''Risk margin'' for an account means the level of maintenance margin or performance bond that the exchange on which a position or portfolio of futures contracts and/or options on futures contracts is traded requires its members to collect from the owner of the account, subject to the following:

(i) Risk margin does not include the equity component of short or long option positions maintained in an account;

(ii) The maintenance margin or performance bond requirement associated with a long option position may be excluded from risk margin to the extent that the value of such long option position does not reduce the total risk maintenance or performance bond requirement of the account that holds the long option position;

(iii) The risk margin for an account carried by an FCM which is not a member of the exchange on which the positions are traded should be calculated as if the FCM were such a member; and

(iv) If a futures commission merchant does not possess sufficient information to determine what portion of an account's total margin requirement

represents risk margin, all of the margin required by the exchange, clearing organization, or other futures commission merchant or entity for that account, shall be treated as risk margin.

* * * * *

(e)(1) * * *

(ii) For a futures commission merchant or applicant therefor, 175 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(2)(vi)(C) * * *

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 175 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(2)(vii)(A) * * *

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 175 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(2)(B) * * *

(*1*) 200 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 250 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(2)(viii)(A) * * *

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 150 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(3)(ii) * * *

(A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 150 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(v) * * *

(A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 175 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(vii) *Subordination agreements that incorporate adjusted net capital requirements in effect prior to* [The Effective Date of the Rule Amendment]. Any subordination agreement that incorporates the adjusted net capital requirements in paragraphs (h)(2)(vi)(C)(*2*), (h)(2)(vii)(A)(*2*) and (B)(*2*), (h)(2)(viii)(A)(*2*), (h)(3)(ii)(B), and (h)(3)(v)(B) of this section as in effect prior to [The Effective Date of the Rule Amendment] and which has been deemed to be satisfactorily subordinated pursuant to this section prior to [The Effective Date of the Rule Amendment] shall continue to be deemed a satisfactory subordination agreement until the maturity of such agreement. In the event, however, that such agreement is amended or renewed for any reason, then such agreement shall not be deemed a satisfactory subordination agreement unless the amended or renewed agreement meets the requirements of this section.

6. Section 1.18 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.18 Records for and relating to financial reporting and monthly computation by futures commission merchants and introducing brokers.

* * * * *

(b)(1) Each applicant or registrant must make and keep as a record in accordance with § 1.31 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or the requirements of the designated self-regulatory organization to which it is subject as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission or designated self-regulatory organization, if any, in the case of a registrant, within 17 business days after the date for which the computations are made, commencing the first month end after the date the application for registration is filed.

(2) An applicant or registrant that has filed a Form 1–FR or Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA (FOCUS report) in accordance with the requirements of § 1.10 will be deemed to have satisfied the requirements of paragraph (b)(1) of this section.

Issued in Washington, DC, on July 1, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–17218 Filed 7–8–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143679–02]

RIN 1545–BB68

Effect of Elections in Certain Multi-Step Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that give effect to section 338(h)(10) elections made in certain multi-step transactions. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by October 7, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–143679–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–143679–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Daniel Heins, Mary Goode or Reginald Mombrun at (202) 622–7930; concerning submissions of comments, Guy Traynor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of

the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 338. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issues of the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. The number of corporations affected is limited because section 338(h)(10) elections are made only in extraordinary circumstances, the sale of a business. Furthermore, these regulations only affect transactions in which the stock of the acquiring corporation is a significant part of the consideration. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at *www.irs.gov/regs.* The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Daniel Heins and Mary Goode, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.338(h)(10)–1 is also issued under 26 U.S.C. 337(d), 338 and 1502.

2. § 1.338(h)(10)–1 is amended as follows:

1. Paragraph (c)(2) is revised

2. Pargraph (e) *Examples 11* through *14* are added.

The revision and additions read as follows:

§ 1.338(h)(10)–1 Deemed asset sale and liquidation.

* * * * *

(c) * * *

(2) [The text of the proposed amendment to § 1.338(h)(10)–1(c)(2) is the same as the text of § 1.338(h)(10)–1T(c)(2) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(e) * * *

Examples 11 through *14* [The text of the proposed amendments to § 1.338(h)(10)–1(e) *Examples 11* through *14* is the same as the text of § 1.338(h)(10)-1T(e) *Examples 11* through *14* published elsewhere in the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–17227 Filed 7–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–142538–02]

RIN 1545–BB21

Authority To Charge Fees for Furnishing Copies of Exempt Organizations' Material Open to Public Inspection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to fees for copies of exempt organizations' material available to the public under section 6104 of the Internal Revenue Code (Code). The text of the temporary regulations also serves as the text of the proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by October 7, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG–142538–02), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:PA:RU (REG–142538–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Sarah Tate, 202–622–4590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The IRS' obligation under section 6104 of the Code to make certain information open to public inspection is satisfied by making the information available to the public at such times and places as the IRS shall reasonably prescribe. The existing regulations provide that copies of the information that the IRS must make open to public inspection shall be available to members of the public upon written request. Currently, § 301.6104(a)–6(d) provides that the IRS will charge a ''fee'' for copies of material available to the public under section 6104(a)(1) of the Code, including approved applications for recognition of tax-exempt status and supporting papers. Currently, § 301.6104(b)–1(d)(4) provides that the Commissioner of Internal Revenue (Commissioner) may prescribe a ''reasonable fee'' for copies of material available to the public under section 6104(b) of the Code, including certain information furnished on exempt organization annual information returns.

This notice of proposed rulemaking amends the existing regulations to clarify that any fee assessed by the IRS in the exercise of its discretion, whether in the case of requests for photocopies,

or for special media (*e.g.*, computer printouts, transcripts, CD–ROM reproductions), shall be no more than the fee that would be assessed under the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(4)(A)(i), by the Commissioner from time to time (the ''IRS' FOIA fee schedule''). For paper copies, the IRS' FOIA fee schedule, at 26 CFR § 601.702(f)(3)(iv), grants the first 100 pages free of charge to requesters other than commercial use requesters, but otherwise sets a per-page copying fee applicable to all requesters. The IRS' FOIA fee schedule, at 26 CFR § 601.702(f)(5), authorizes fees based on the actual cost of non-paper products, such as computer disks.

Currently, § 301.6104(d)–1(d)(3)(i) provides that an exempt organization required to furnish copies to a requester may charge a copying fee corresponding to that which the IRS may charge. This notice of proposed rulemaking amends the existing regulations to make clear that an exempt organization may charge the applicable per-page copying fee under the IRS' FOIA fee schedule. An exempt organization need not provide the first 100 pages of copies free of charge to requesters other than commercial use requesters as the IRS does.

Through December 18, 2002, the IRS' FOIA fee schedule set fees of $1.00 for the first page and $.15 for each subsequent page of exempt organization returns and related documents. 26 CFR § 601.702(f)(5)(iv)(B). Effective December 19, 2002, the fees are to be established by the Commissioner from time to time. 26 CFR § 601.702(f) as updated at 67 FR 69673, 69682. Currently, the Commissioner has established fees of $.20 per page, up to 8½ by 14 inches, made by photocopy or similar process, and actual cost for other types of duplication. 31 CFR § 1.7(g)(1)(i), (ii) and (iii).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, the IRS will consider any electronic or written comments (a signed original and eight (8) copies) that the IRS timely receives. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this notice of proposed rulemaking is Sarah Tate, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6104(a)–6(d) is also issued under 5 U.S.C. 552

Section 301.6104(b)–1(d)(4) is also issued under 5 U.S.C. 552

Section 301.6104(d)–1(d)(3)(i) is also issued under 5 U.S.C. 552 * * *

2. In § 301.6104(a)–6(d), the fourth sentence is revised to read as follows:

[The text of this proposed revision is the same as the text of § 301.6104(a)–6(d)–T published elsewhere in this issue of the **Federal Register**].

3. In § 301.6104(b)–1(d)(4), the last sentence is revised to read as follows:

[The text of this proposed revision is the same as the text of § 301.6104(b)–1(d)(4)–T published elsewhere in this issue of the **Federal Register**].

4. In § 301.6104(d)–1(d)(3)(i), the second sentence is revised to read as follows:

[The text of this proposed revision is the same as the text of § 301.6104(d)–1(d)(3)(i)–T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 03–17228 Filed 7–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–140930–02]

RIN 1545–BB15

Testimony or Production of Records in a Court or Other Proceeding

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information. The purpose of the proposed amendments is to provide specific instructions and to clarify when the existing regulation does not apply because more specific procedures take precedence. The proposed amendments extend the application of the regulation to former IRS officers and employees as well as to persons who are or were under contract to the IRS. The proposed amendments would affect current and former IRS officers, employees and contractors and persons who make requests or demands for disclosure.

DATES: Written or electronic comments and requests for a public hearing must be received by October 7, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–140930–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–140930–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to IRS Internet site at: *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: David Fish or J. Suzanne Sones, (202) 622–4590 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the

Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 8, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in 26 CFR 301.9000–5(a). This information is required to enable the authorizing official to make an informed decision as to whether to grant a request or demand in a non-IRS matter. This information will be used to inform the authorizing official of the background of the non-IRS matter and to refine the scope of the testimony or disclosures sought. The collection of information is voluntary and required to obtain a benefit. The likely respondents are individuals, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual reporting: 1,400 hours.

Estimated average annual burden hours per respondent: 1 hour.

Estimated number of respondents: 1,400.

Estimated annual frequency of responses: 1,400.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Internal Revenue Code (Code).

Background

This document contains proposed amendments to 26 CFR part 301 under 5 U.S.C. 301. The existing regulation provides procedures for IRS officers and employees to follow upon receipt of a request or demand for disclosure of IRS records or information. Under this proposed regulation, current and former IRS officers, employees and contractors may not disclose IRS records or information without first receiving authorization to do so. To conserve valuable resources, the IRS carefully considers the nature and circumstances of a request or demand for IRS records or information prior to committing resources to fulfilling the request or demand. If the IRS is a disinterested party or has no affected interest with respect to a request or demand and would consider the commitment of resources to comply with the request or demand inappropriate, the IRS may deny the request or demand for IRS records or information. For example, the IRS may deny a request by private litigants for the expert testimony of an IRS employee as to the Federal tax ramifications of various transactions based on information furnished by the private litigants. Such testimony could compromise the enforcement of the tax laws, should the IRS later conduct an examination of the tax consequences of the transactions.

The proposed regulation provides more specificity regarding the content of a request to allow an authorizing official to make an informed decision when authorizing or denying the request. Similarly, the proposed regulation provides more specific guidance to the authorizing officials, or to current or former IRS officers, employees or contractors, who receive requests or demands for IRS records or information, as to the circumstances for authorization or denial of such requests. Additionally, the proposed regulation applies to former IRS officers, employees or contractors whose previous access to IRS records or information may be the subject of such requests or demands. In such cases the IRS has an interest in protecting IRS records or information and should receive notice and have an opportunity to determine the extent to which disclosure should be permitted.

The existing regulation at 26 CFR 301.9000–1(f) provides guidance for IRS officers and employees in state liquor, tobacco, firearms, or explosives cases. This proposed regulation does not contain such a provision because Treasury Department Order No. 120–01, effective July 1, 1972, transferred from the IRS to the United States Bureau of Alcohol, Tobacco and Firearms (ATF) those functions, powers and duties related to alcohol, tobacco, firearms and explosives. The ATF promulgated its own regulations guiding disclosure in testimony and in related matters, which can be found at 27 CFR 70.803. Effective January 24, 2003, the Homeland Security Act of 2002, Public Law 107–296, divided ATF into two new agencies, the Tax and Trade Bureau (TTB) in the Treasury Department and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE) in the Justice Department. Section 1111(c)(1)–(c)(2) of the Homeland Security Act transferred to ATFE the authorities and functions of ATF, except for the authorities and functions of ATF relating to the administration and enforcement of chapters 51 and 52 and sections 4181 and 4182 of the Code, and title 27, USC. Section 1111(d)(1), (d)(3) of the Homeland Security Act provided that TTB shall administer the authorities and functions of ATF not transferred to ATFE. Treasury Department Order No. 120–01, effective January 24, 2003, designated TTB as the Alcohol and Tobacco Tax and Trade Bureau. The disclosure regulations found at 27 CFR 70.803 are still applicable to TTB.

The existing regulation contains a delegation of authority from the Secretary of the Treasury to the Commissioner of Internal Revenue (Commissioner) to respond to requests and demands for IRS records and information. This delegation has been deleted as unnecessary as it is contained in existing statutes and delegation orders. See, *e.g.*, section 7804; Delegation Order 150–10.

This proposed regulation reflects changes in format and definitions to make it easier to understand and apply.

Explanation of Provisions

Overview

Under 5 U.S.C. 301, heads of Executive or military departments may prescribe regulations for, among other things, the custody, use, and preservation of the departments' records, papers, and property. Many departments and agencies have promulgated regulations under 5 U.S.C. 301 to provide procedures for the disclosure of official records and information. Generally, these are termed Touhy regulations, after the Supreme Court's decision in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). In that case, the Supreme Court held that an agency employee could not be held

in contempt for refusing to disclose agency records or information when following the instructions of his or her supervisor regarding the disclosure. As such, an agency's Touhy regulations are the instructions agency employees are to follow when those employees receive requests or demands to testify or otherwise disclose agency records or information.

This proposed regulation expands the definition of IRS officers and employees to include both current and former officers and employees. In addition, this proposed regulation extends to IRS contractors, including their current and former employees. IRS records or information known by these persons retains the character of government records or information, subject to the direction and control of the Commissioner, even after the employment or contractual relationship has ended. This proposed regulation provides current and former IRS officers, employees and contractors with a procedure to follow when they receive requests and demands for IRS records and information.

This proposed regulation is separated into six sections for ease of use.

Section 301.9000–1 Definitions

New definitions appear in this proposed regulation to delineate the difference in treatment between requests or demands for IRS records or information in (1) tax administration proceedings and other proceedings in which the IRS or an IRS officer or employee acting in his or her official capacity is a party; (2) matters that do not involve the IRS, such as civil litigation between private parties; and (3) congressional matters. The proposed terminology is ''IRS matters,'' ''non-IRS matters,'' and ''IRS congressional matters,'' respectively. Previously, ''IRS matters'' were also called ''referred cases.''

By including former as well as current IRS officers and employees in the definition of ''IRS officers and employees,'' this proposed regulation extends the reach of the proposed procedures. Similarly, a new definition extends the proposed procedures to reach current and former ''IRS contractors.''

This proposed regulation defines ''testimony authorization,'' the longstanding term for the instructions to the testifying employee or the employee providing the information, and ''authorizing official,'' the employee with delegated authority to authorize testimony. In addition, this proposed regulation gives a more detailed definition of ''internal revenue records or information.''

Section 301.9000–2 Considerations in Responding to a Request or Demand for IRS Records or Information

Testimony or disclosure of IRS records or information is not permitted if the testimony or disclosure would: violate a Federal statute or rule of procedure, violate a tax treaty or convention of the United States, violate a Federal regulation, or reveal classified national security information. This proposed regulation lists privileges that may be asserted in response to a request or demand.

This proposed regulation specifically mentions section 6103 of the Code, as that is the primary statute governing disclosure of IRS records and information. The majority of the records and information sought in both IRS and non-IRS matters are returns and return information protected by the confidentiality provisions of section 6103 of the Code.

This proposed regulation provides a list of factors to consider in deciding whether to authorize testimony or disclosure in non-IRS matters, because requests and demands in non-IRS matters divert resources from the administration of the internal revenue laws and related statutes. These factors generally are aimed at the effect compliance with the request or demand would have on the IRS's primary mission of enforcement of the internal revenue laws and related statutes. The factors include the IRS's anticipated commitment of time and anticipated expenditure of funds necessary to comply with the request or demand, the number of similar requests and their cumulative effect on the expenditure of IRS resources, the potential effect of a non-IRS matter on the administration of the internal revenue laws and related statutes, and the importance of the legal issues presented. The IRS also considers practical problems with complying with a request or demand for IRS records or information.

Section 301.9000–3 Prohibition on Disclosure of IRS Records or Information Without Testimony Authorization

The general rule is that, in response to a request or demand, an IRS officer, employee or contractor may not provide testimony or IRS records or information unless the Commissioner, or a delegate, gives instructions therefor. Such an instruction is called a ''testimony authorization.'' A ''testimony authorization'' includes an instruction to testify or provide IRS records or information in whole, in part or not at all. In the interim between receipt of a request or demand and the issuance of a testimony authorization, an IRS officer, employee or contractor may appear in person to advise that he or she is awaiting instructions (in the form of a testimony authorization).

Testimony authorizations are required, for the most part, in situations involving court or congressional testimony. There are, however, exceptions to the requirement of a testimony authorization. In an IRS matter in which the attorney or other representative of the government requests testimony, no testimony authorization is required. Similarly, this proposed regulation does not require a testimony authorization in an IRS matter in which the request or demand is for responses solely in writing, produced under the direction of government counsel, such as admissions, document production and written interrogatories to parties. Also, testimony authorization is not required if a former IRS officer, employee or contractor receives a request or demand for IRS records or information that involve general knowledge gained while employed or under contract with the IRS. Finally, testimony authorization also is not required if more specific procedures of the Commissioner apply to the disclosure. Such procedures include, for example, those relating to Freedom of Information Act (5 U.S.C. 552) or Privacy Act (5 U.S.C. 552a) requests, disclosures in accordance with 26 CFR 601.702(d), disclosures to state tax agencies pursuant to section 6103(d) of the Code, or disclosures to the United States Department of Justice pursuant to an *ex parte* order under section 6103(i)(1) of the Code.

Section 301.9000–4 Procedure in the Event of a Request or Demand for IRS Records or Information

This proposed regulation gives specific instructions to IRS officers, employees and contractors who receive requests or demands for IRS records or information. An IRS officer, employee or contractor who receives a request or demand for IRS records or information (except for requests or demands in United States Tax Court cases, in personnel, labor relations, government contract, or IRS congressional matters, or in matters related to informant claims or the rules of *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388 (1971) (Bivens matters), or the Federal Tort Claims Act (FTCA)) shall notify promptly the IRS Disclosure Officer servicing the IRS officer's, employee's or contractor's

geographic area and await instructions from an authorizing official.

In the case of a request or demand on behalf of a petitioner in a United States Tax Court case, IRS officers, employees and contractors shall notify promptly the IRS Chief Counsel attorney assigned to the case and await instructions from an authorizing official. In the case of a request or demand on behalf of an appellant, grievant, complainant or representative for IRS records or information in a personnel, labor relations, government contract, Bivens or FTCA matter, or a matter related to informant claims, IRS officers, employees or contractors shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney assigned to the case. If there is no IRS Associate Chief Counsel (General Legal Services) attorney assigned to the case, the IRS officer, employee or contractor shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney servicing the geographic area. The IRS officer, employee or contractor shall then await instructions from an authorizing official. In the case of a request or demand in an IRS congressional matter, the IRS officer, employee or contractor shall notify promptly the IRS Office of Legislative Affairs and await instructions.

If, in response to a demand for IRS records or information, an authorizing official has not had a sufficient opportunity to issue a testimony authorization, or determines that denial of the demand for IRS records or information is proper, the authorizing official shall request the attorney or other representative of the government to oppose such demand and respectfully inform the court, administrative agency or other authority, by appropriate action, that the authorizing official either has not yet issued a testimony authorization, or has issued a testimony authorization, to the IRS officer, employee or contractor, that denies permission, in whole or in part, to testify or disclose the IRS records or information. If the authorizing official denies a testimony authorization in whole or in part, the authorizing official shall request the attorney or other representative of the government to inform the court, administrative agency, or other authority of the reasons for not authorizing the testimony or the disclosure of the IRS records or information and to take such other action in opposition as may be appropriate (including, but not limited to, filing a motion to quash or a motion to remove to Federal district court).

In addition to providing specific procedural instructions, this proposed regulation clarifies and updates the provision in the existing regulation pertaining to penalties that apply to IRS officers, employees and contractors in case of failure to follow the requirements of the proposed regulation.

Section 301.9000–5 Written Statement Required by Party Seeking Testimony or Disclosure of IRS Records or Information in Non-IRS Matters

This proposed regulation formalizes the practice of requiring a party who seeks testimony or disclosure of IRS records or information for use in any non-IRS matter to provide detailed information that would enable the authorizing official to make an informed decision whether to grant or limit the request or demand. Such information is necessary to inform the authorizing official of the factual background of the non-IRS matter. By contrast, generally the factual background information already is known to the authorizing official in an IRS matter. The factual background is also useful in refining the scope of the testimony or document production, thereby conserving IRS resources and avoiding waste. For example, a request for testimony may be obviated by providing IRS records or information in a form admissible in court without need for the presence of an IRS officer or employee, or by submission of a declaration under penalty of perjury pursuant to 28 U.S.C. 1746.

This proposed regulation establishes requirements for a written statement setting forth particular information that will provide authorizing officials with the facts necessary to determine whether to grant or limit testimony or the disclosure of IRS records or information so as to comply with the law and conserve IRS resources. Parties in non-IRS matters sometimes serve process with extremely short time frames. The IRS will comply with such requests or demands only if the IRS has time to evaluate adequately the request. This proposed regulation establishes a reasonable time for compliance, generally, not less than fifteen (15) business days. Also, parties in non-IRS matters are sometimes unaware that a request or demand does not supersede the confidentiality accorded to returns and return information under section 6103 of the Code. This proposed regulation generally requires a statement of the applicable exception under section 6103 of the Code that would permit the disclosure of returns and return information for the purpose sought. The authorizing official may waive the requirement of a written statement for good cause.

Section 301.9000–6 Examples

This proposed regulation gives examples of testimony authorization situations that illustrate the principles of this proposed regulation.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that 5 U.S.C. 553(b), the Administrative Procedure Act, does not apply to these proposed regulations.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that of the estimated 1,400 requests received annually, less than 500 of those requests are estimated to be received from small entities. Moreover, the burden associated with complying with the collection of information in these regulations is estimated to be only 1 hour per respondent. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, the IRS will consider any written (a signed original and eight (8) copies) or electronic comments that the IRS timely receives. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits a written comment. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of this proposed regulation are David Fish and J. Suzanne Sones, Office of Associate

Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows.

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for Part 301 is amended by adding the following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.9000–1 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;

Section 301.9000–2 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;

Section 301.9000–3 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;

Section 301.9000–4 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;

Section 301.9000–5 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;

Section 301.9000–6 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;

* * *

Par. 2. Section 301.9000–1 is revised and §§ 301.9000–2 through 301.9000–7 are added to read as follows:

§ 301.9000–1 Definitions when used in §§ 301.9000–1 through 301.9000–6.

(a) *IRS records or information* means any material (including copies thereof) contained in the files (including paper, electronic or other media files) of the Internal Revenue Service (IRS), any information relating to material contained in the files of the IRS, or any information acquired by an IRS officer or employee, while an IRS officer or employee, as a part of the performance of official duties or because of that IRS officer or employee's official status with respect to the administration of the internal revenue laws or any other laws administered by or concerning the IRS. IRS records or information includes, but is not limited to, returns and return information as those terms are defined in section 6103(b)(1) and (2) of the Internal Revenue Code (Code), tax convention information as defined in section 6105 of the Code, information gathered during Bank Secrecy Act and money laundering investigations, and personnel records and other information pertaining to IRS officers and employees. IRS records and information also includes information received, generated or collected by an IRS contractor pursuant to the contractor's contract or agreement with the IRS. The term does not include records or information obtained by IRS officers and employees while under the direction and control of the United States Attorney's Office during the conduct of a Federal grand jury investigation. The term IRS records or information does include records or information obtained during the administrative stage of a criminal investigation (prior to the initiation of the grand jury), obtained from IRS files (such as transcripts or tax returns), or subsequently obtained by the IRS for use in a civil investigation.

(b) *IRS officers and employees* means all officers and employees of the United States appointed by, employed by, or subject to the directions, instructions, or orders of the Commissioner or IRS Chief Counsel and also includes such former officers and employees.

(c) *IRS contractor* means any person, including such person's current and former employees, maintaining IRS records or information pursuant to a contract or agreement with the IRS, and also includes former contractors.

(d) A *request* is any request for testimony of an IRS officer, employee or contractor or for production of IRS records or information, oral or written, by any person, which is not a demand.

(e) A *demand* is any subpoena or other order of any court, administrative agency or other authority, or the Congress, or a committee or subcommittee of the Congress, and any notice of deposition (either upon oral examination or written questions), request for admissions, request for production of documents or things, written interrogatories to parties, or other notice of, request for, or service for discovery in a matter before any court, administrative agency or other authority.

(f) An *IRS matter* is any matter before any court, administrative agency or other authority in which the United States, the Commissioner, the IRS, or any IRS officer or employee acting in an official capacity, or any IRS officer or employee (including an officer or employee of IRS Chief Counsel's office) in his or her individual capacity if the United States Department of Justice or the agency has agreed to represent or provide representation to the IRS officer or employee, is a party and that is directly related to official business of the IRS or to any law administered by or concerning the IRS, including, but not limited to, judicial and administrative proceedings described in section 6103(h)(4) and (l)(4) of the Code.

(g) An *IRS congressional matter* is any matter before the Congress, or a committee or subcommittee of the Congress, that is related to the administration of the internal revenue laws or any other laws administered by or concerning the IRS, or to IRS records or information.

(h) A *non-IRS matter* is any matter that is not an IRS matter or an IRS congressional matter.

(i) A *testimony authorization* is a written instruction or oral instruction memorialized in writing within a reasonable period by an authorizing official that sets forth the scope of and limitations on proposed testimony and/or disclosure of IRS records or information issued in response to a request or demand for such IRS records or information. A testimony authorization may grant or deny authorization to testify or disclose IRS records or information and may make an authorization effective only upon the occurrence of a precedent condition, such as the receipt of a consent complying with the provisions of section 6103(c) of the Code. To authorize testimony means to issue the instruction described in this paragraph (i).

(j) An *authorizing official* is a person with delegated authority to authorize testimony and the disclosure of IRS records or information.

§ 301.9000–2 Considerations in responding to a request or demand for IRS records or information.

(a) *Situations in which disclosure shall not be authorized.* Authorizing officials shall not permit testimony or disclosure of IRS records or information in response to requests or demands if—

(1) Testimony or disclosure of IRS records or information would violate a Federal statute including, but not limited to, sections 6103 or 6105 of the Internal Revenue Code (Code), the Privacy Act of 1974 (5 U.S.C. 552a), or a rule of procedure, such as the grand jury secrecy rule, Fed. R. Crim. P. 6(e);

(2) Testimony or disclosure of IRS records or information would violate a specific Federal regulation, including, but not limited to, 31 CFR 103.53;

(3) Testimony or disclosure of IRS records or information would reveal classified national security information, unless properly declassified;

(4) Testimony or disclosure of IRS records or information would reveal the identity of an informant; or

(5) Testimony or disclosure of IRS records or information would reveal investigatory records or information compiled for law enforcement purposes which would permit interference with law enforcement proceedings or would disclose investigative techniques and

procedures, the effectiveness of which could thereby be impaired.

(b) *Assertion of privileges.* Any applicable privilege or protection under law may be asserted in response to a request or demand for testimony or disclosure of IRS records or information, including, but not limited to, the following—

(1) Attorney-client privilege;

(2) Attorney work product doctrine; and

(3) Deliberative process (executive) privilege.

(c) *Non-IRS matters.* If any person makes a request or demand for IRS records or information in connection with a non-IRS matter, authorizing officials shall take into account the following additional factors in responding to such request or demand—

(1) Whether the requester is a Federal agency, or a state or local government or agency thereof;

(2) Whether the demand was issued by a Federal or State court, administrative agency or other authority;

(3) The potential effect of the case on the administration of the internal revenue laws or any other laws administered by or concerning the IRS;

(4) The importance of the legal issues presented;

(5) Whether the IRS records or information are available from other sources;

(6) The IRS's anticipated commitment of time and anticipated expenditure of funds necessary to comply with the request or demand;

(7) The number of similar requests and their cumulative effect on the expenditure of IRS resources;

(8) Whether the request or demand allows a reasonable time for compliance (generally, at least fifteen business days);

(9) Whether the testimony or disclosure is appropriate under the rules of procedure governing the case or matter in which the request or demand arises;

(10) Whether the request or demand involves expert witness testimony;

(11) Whether the request or demand is for the testimony of an IRS officer, employee or contractor who is without personal knowledge of relevant facts;

(12) Whether the request or demand is for the testimony of a presidential appointee or senior executive and whether the testimony of a lower-level official would suffice;

(13) Whether the procedures in § 301.9000–5 have been followed; and

(14) Any other relevant factors that may be brought to the attention of the authorizing official.

§ 301.9000–3 Testimony authorizations.

(a) *Prohibition on disclosure of IRS records or information without testimony authorization.* Except as provided in paragraph (b) of this section, when a request or demand for IRS records or information is made, no IRS officer, employee or contractor shall testify or disclose IRS records or information to any court, administrative agency or other authority, or to the Congress, or to a committee or subcommittee of the Congress without a testimony authorization. However, an IRS officer, employee or contractor may appear in person to advise that he or she is awaiting instructions from an authorizing official with respect to the request or demand.

(b) *Exceptions.* No testimony authorization is required in the following circumstances—

(1) To respond to a request or demand for IRS records or information by an attorney or other government representative regarding an IRS matter;

(2) To respond solely in writing, under the direction of an attorney or other representative of the government, to requests and demands in IRS matters, including, but not limited to, admissions, document production, and written interrogatories to parties;

(3) To respond to a request or demand issued to a former IRS officer, employee or contractor for expert or opinion testimony if the testimony involves general knowledge (such as information contained in published procedures of the IRS or the IRS Office of Chief Counsel) gained while the former IRS officer, employee or contractor was employed or under contract with the IRS; or

(4) If a more specific procedure established by the Commissioner governs the disclosure of IRS records or information. These procedures include, but are not limited to, those relating to: procedures pursuant to 26 CFR 601.702(d), Freedom of Information Act requests pursuant to 5 U.S.C. 552, Privacy Act of 1974 requests pursuant to 5 U.S.C. 552a, disclosures to state tax agencies pursuant to section 6103(d) of the Code, and disclosures to the United States Department of Justice pursuant to an *ex parte* order under section 6103(i)(1) of the Code.

§ 301.9000–4 Procedure in the event of a request or demand for IRS records or information.

(a) *Purpose and scope.* This section prescribes procedures to be followed by IRS officers, employees and contractors upon receipt of a request or demand in matters where a testimony authorization is or may be required.

(b) *Notification of the Disclosure Officer.* Except for requests or demands in United States Tax Court cases, in personnel, labor relations, government contract, or IRS congressional matters, or in matters related to informant claims or the rules of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388 (1971) (Bivens matters), or the Federal Tort Claims Act (FTCA), an IRS officer, employee or contractor who receives a request or demand for IRS records or information for which a testimony authorization is or may be required shall notify promptly the Disclosure Officer servicing the IRS officer's, employee's or contractor's geographic area. Such IRS officer, employee or contractor shall await instructions from the authorizing official concerning the response to the request or demand.

(c) *Requests or demands in United States Tax Court cases.* An IRS officer, employee or contractor who receives a request or demand for IRS records or information on behalf of a petitioner in a United States Tax Court case shall notify promptly the IRS Chief Counsel attorney assigned to the case. Such IRS Chief Counsel attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received such request or demand shall await instructions from the authorizing official.

(d) *Requests or demands in personnel, labor relations, government contract, Bivens or FTCA matters, or matters related to informant claims.* An IRS officer, employee or contractor who receives a request or demand, on behalf of an appellant, grievant, complainant or representative, for IRS records or information in a personnel, labor relations, government contract, Bivens or FTCA matter, or matter related to informant claims, shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney assigned to the case. If no IRS Associate Chief Counsel (General Legal Services) attorney is assigned to the case, the IRS officer, employee or contractor shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney servicing the geographic area. Such IRS Associate Chief Counsel (General Legal Services) attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received such request or demand shall await instructions from the authorizing official.

(e) *Requests or demands in IRS congressional matters.* An IRS officer, employee or contractor who receives a request or demand in an IRS congressional matter shall notify

promptly the IRS Office of Legislative Affairs. The IRS officer, employee or contractor who received such request or demand shall await instructions from the authorizing official.

(f) *Opposition to a demand for IRS records or information in IRS and non-IRS matters.* If, in response to a demand for IRS records or information, an authorizing official has not had a sufficient opportunity to issue a testimony authorization, or determines that the demand for IRS records or information should be denied, the authorizing official shall request the attorney or other representative of the government to oppose such demand and respectfully inform the court, administrative agency or other authority, by appropriate action, that the authorizing official either has not yet issued a testimony authorization, or has issued a testimony authorization, to the IRS officer, employee or contractor, that denies permission to testify or disclose the IRS records or information. If the authorizing official denies authorization in whole or in part, the attorney or other representative of the government shall inform the court, administrative agency or other authority of the reasons the authorizing official gives for not authorizing the testimony or the disclosure of the IRS records or information or take such other action in opposition as may be appropriate (including, but not limited to, filing a motion to quash or a motion to remove to Federal court).

(g) *Procedure in the event of an adverse ruling.* In the event such court, administrative agency, or other authority rules adversely with respect to the refusal to disclose the IRS records or information pursuant to the testimony authorization, or declines to defer a ruling until a testimony authorization has been received, the IRS officer, employee or contractor who has received the request or demand shall, pursuant to this section, respectfully decline to testify or disclose the IRS records or information.

(h) *Penalties.* Any IRS officer or employee who discloses IRS records or information without following the provisions of this section or § 301.9000–3, may be subject to administrative discipline, up to and including dismissal. Any IRS officer, employee or contractor may be subject to applicable contractual sanctions and/or criminal penalties, including prosecution under 5 U.S.C. 552a(i), for willful disclosure in an unauthorized manner of information protected by the Privacy Act, or under section 7213 of the Code, for willful disclosure in an unauthorized manner of return information.

(i) *No creation of benefit or separate privilege.* Nothing in this section, and nothing in §§ 301.9000–1 through 301.9000–6, creates, is intended to create, or may be relied upon to create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States. Nothing in these regulations creates a separate privilege or basis to withhold IRS records or information.

§ 301.9000–5 Written statement required for requests or demands in non-IRS matters.

(a) *Written statement.* A request or demand for IRS records or information for use in a non-IRS matter shall be accompanied by a written statement made by or on behalf of the party seeking the testimony or disclosure of IRS records or information, setting forth—

(1) A brief description of the parties to and subject matter of the proceeding and the issues;

(2) A summary of the testimony, IRS records or information sought, the relevance to the proceeding, and the estimated volume of IRS records involved;

(3) The time that will be required to present the testimony (on both direct and cross examination);

(4) Whether any of the IRS records or information is a return or is return information (as defined in section 6103(b) of the Internal Revenue Code (Code)), or tax convention information (as defined in section 6105(c)(1) of the Code), and the statutory authority for the disclosure of such return or return information (and, if no consent to disclose pursuant to section 6103(c) of the Code accompanies the request or demand, the reason such consent is not necessary);

(5) Whether a declaration of an IRS officer, employee or contractor under penalties of perjury pursuant to 28 U.S.C. 1746 would suffice in lieu of deposition or trial testimony;

(6) Whether deposition or trial testimony is necessary where IRS records are authenticated under applicable rules of evidence and procedure;

(7) Whether IRS records or information are available from other sources; and

(8) A statement that the request or demand allows a reasonable time (generally, at least fifteen business days) for compliance.

(b) *Permissible waiver of statement.* The requirement of a written statement in paragraph (a) of this section may be waived by the authorizing official for good cause.

§ 301.9000–6 Examples.

The following examples illustrate the provisions of §§ 301.9000–1 through 301.9000–5:

Example 1. A taxpayer sues a practitioner in state court for malpractice in connection with the practitioner's preparation of a Federal income tax return. The taxpayer subpoenas an IRS employee to testify concerning the IRS employee's examination of the taxpayer's Federal income tax return. The taxpayer provides the statement required by § 301.9000–5. This is a non-IRS matter. A testimony authorization would be required for the IRS employee to give such testimony. (In addition, the taxpayer would be required to execute an appropriate consent under section 6103(c) of the Internal Revenue Code (Code)). The IRS generally opposes an IRS officer's, employee's or contractor's appearance in such cases because the IRS is a disinterested party with respect to the dispute and would consider the commitment of resources to comply with the subpoena inappropriate.

Example 2. In a state judicial proceeding concerning child support, the child's custodial parent subpoenas for a deposition an Internal Revenue Service (IRS) agent who is examining certain of the non-custodial parent's post-divorce Federal income tax returns. This is a non-IRS matter. The custodial parent submits with the subpoena the statement required by § 301.9000–5 stating as the reason for the lack of taxpayer consent to disclosure that the non-custodial parent has refused to provide the consent. (Both a consent from the taxpayer complying with section 6103(c) and a testimony authorization would be required prior to the IRS agent testifying at the deposition.) Should taxpayer consent be obtained, where appropriate, the IRS may provide a declaration and/or certified return information of the taxpayer. A deposition would be unnecessary under the circumstances.

Example 3. The chairperson of a congressional committee requests the appearance of an IRS employee before the committee and committee staff to submit to questioning by committee staff concerning the procedures for processing Federal employment tax returns. This is an IRS congressional matter. Even though questioning would not involve the disclosure of returns or return information, the questioning would involve the disclosure of IRS records or information; therefore, a testimony authorization would be required. The IRS employee must contact the IRS Office of Legislative Affairs for instructions before appearing.

Example 4. The IRS opens a criminal investigation as to the tax liabilities of a taxpayer. This is an IRS matter. At some point during the criminal investigation, the IRS refers the matter to the United States Department of Justice, requesting the institution of a Federal grand jury to investigate further potential criminal tax violations. Subsequently, the United States Department of Justice approves the request and initiates a grand jury investigation. The grand jury subsequently indicts the taxpayer,

and the taxpayer subpoenas an IRS special agent for testimony regarding the investigation. The records and information collected during the administrative stage of the investigation, including the taxpayer's tax returns from IRS files, are IRS records and information. A testimony authorization is required for the IRS special agent to testify regarding this information. However, no IRS testimony authorization is required regarding the information collected by the IRS special agent when the IRS special agent was acting under the direction and control of the United States Attorney's Office in the Federal grand jury investigation. That information is not IRS records or information within the meaning of § 301.9000–1(a).

Example 5. The United States Department of Justice attorney representing the IRS in a suit for refund requests testimony from an IRS revenue agent. This is an IRS matter. A testimony authorization would not be required in order for the IRS revenue agent to testify because the testimony was requested by government counsel.

Example 6. A state assistant attorney general, acting in accordance with a recommendation from his state's department of revenue, is prosecuting a taxpayer under a state criminal law proscribing the intentional failure to file a state income tax return. The assistant attorney general serves an IRS employee with a subpoena to testify concerning the taxpayer's Federal income tax return filing history. This is a non-IRS matter. This is also a state judicial proceeding pertaining to tax administration within the meaning of section 6103(h)(4) and (b)(4). As such, the procedures of section 6103(h)(4) apply. A testimony authorization would be required for the testimony demand in the subpoena.

Example 7. A former IRS revenue agent is requested to testify in a divorce proceeding. The request seeks testimony explaining the meaning of entries appearing on one of the parties' transcript of account which is already in the possession of the parties. This is a non-IRS matter. No testimony authorization is required because the testimony requested from the former IRS employee involves general knowledge gained while the former IRS revenue agent was employed with the IRS.

§ 301.9000–7 Effective date.

The provisions of §§ 301.9000–1 through 301.9000–6 apply to any request or demand for IRS records or information received by any IRS officer, employee or contractor on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–17230 Filed 7–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–141669–02]

RIN 1545–BB41

Waiver of Information Reporting Penalties—Determining Whether Correction is Prompt

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to waiver under section 6724 of the Internal Revenue Code (Code) of a penalty imposed by section 6721 for failure to file a correct information return. The proposed regulations provide guidance on the requirement of prompt correction of the failure to file or file correctly. The proposed regulations provide that the IRS will deem information returns promptly corrected if corrected within 30 days of the required filing date, or by August 1 following that required filing date. After August 1, a correction is prompt if made by the time announced by the IRS in published guidance. The proposed regulations do not change the rules for determining reasonable cause for waiving the penalty for failure to furnish correct payee statements under section 6722 or the time to comply with other information reporting requirements under section 6723.

DATES: Written and electronic comments are due by October 7, 2003. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for October 21, 2003, are due by September 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–141669–02), Room 5526, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Commenters may hand deliver submissions Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–141669–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, commenters may submit comments electronically to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Robert A. Desilets, Jr. at (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6724(a) of the Code. Section 301.6724–1(d)(1)(ii)(D) of the proposed regulations will clarify when a correction of an information return is prompt for purposes of establishing reasonable cause to waive the penalty under section 6721 of the Code. Existing § 301.6724–1(d)(1)(ii)(D), adopted on December 31, 1991 (56 FR 67178), provides in pertinent part that a correction is prompt if it occurs on the earliest date of a regular submission of corrections, defining regular submissions as occurring at intervals of 30 or fewer days. Many information return filers have urged the IRS to replace the 30-day correction interval with an interval corresponding to the schedule for tiered penalties.

Explanation of Provisions

I. Section 6721

Section 6721 imposes penalties on failures to file, or file correct, information returns. Section 6721 creates a three-tiered penalty structure to encourage timely filing and prompt correction of errors in previously filed returns. Congress enacted the three-tiered penalty structure in the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239, 103 Stat. 2388, 2389). Section 6721 generally imposes a penalty in the amount of $50 for each return with respect to which a failure occurs, but not to exceed $250,000 per person per calendar year. However, if a filer corrects a failure within 30 days after the required filing date, the penalty with respect to such return shall be $15 in lieu of $50, but not to exceed $75,000 per filer per calendar year. Moreover, if a filer corrects a failure more than 30 days after the required filing date, but before August 1 of the calendar year in which the required filing date occurs, the penalty with respect to each return shall be $30 in lieu of $50, but not to exceed $150,000 per filer per calendar year. Section 6721 provides these penalties to encourage prompt corrections of failures to file, or file correct, information returns. H.R. Rep. 101–386, at 648–649 (1989).

II. Section 6724

Section 6724(a) provides for a waiver of information reporting penalties under sections 6721 through 6723 if the failure giving rise to such penalties was due to reasonable cause and not willful neglect. Under § 301.6724–1(a) of the regulations, to prove reasonable cause for a failure, the filer must establish either that there are significant mitigating factors with respect to the failure or that the failure arose from an event beyond the filer's control (an impediment). In addition, the filer must have acted in a responsible manner both before and after the failure.

Under § 301.6724–1(d) of the regulations, a filer is considered as acting in a responsible manner if the filer exercises reasonable care, *i.e.*, the care that a reasonably prudent person would use under the circumstances in the course of business in determining filing obligations and in handling account information such as account numbers and balances. Section 301.6724–1(d) of the regulations also refers to the promptness of correction, *i.e.*, when the filer undertook significant steps to avoid or mitigate the failure.

Section 301.6724–1(d)(1)(ii)(D) currently provides, in part, that a correction is considered prompt if it is made within 30 days after the date of removal of an impediment or discovery of a failure, or on the earliest date thereafter on which a regular submission of corrections occurs. Submissions are regular only if they occur at intervals of 30 days or fewer. Under the 30-day rule, a filer of a large number of information returns that discovers errors over a period of several months would be required to submit multiple corrections in a series of filings. Information return filers have urged the IRS to allow filers to ''bundle'' their corrections, *i.e.*, submit the corrected information returns less frequently according to a defined timetable. The IRS agrees that the current rule may be burdensome and that bundling should be permitted.

The proposed regulations provide that a correction of an information return is prompt if the filer makes the correction within 30 days of the required filing date, or by August 1 following that required filing date. After August 1, a correction is prompt if the filer makes the correction by the date or dates announced in guidance governing the electronic or magnetic filing of information returns, or in other guidance including forms and instructions. It is anticipated that the date or dates will be in November and/or December of the calendar year in which the required filing date occurs. After the dates announced in the guidance, the proposed regulations provide that a correction is prompt if it is made within 30 days after the date the impediment is removed or the failure is discovered.

The proposed regulations apply solely for the purpose of determining whether there is reasonable cause for waiving the penalty for failure to file correct information returns imposed by section 6721. The proposed regulations do not apply for the purpose of determining whether there is reasonable cause for waiving the penalties imposed by sections 6722 and 6723. The IRS and Treasury Department believe that a filer should correct promptly a failure to furnish a correct payee statement or a failure to satisfy the reporting requirements described in section 6724(d)(2) and (3) with regard to sections 6722 and 6723, respectively. Therefore, the proposed regulations retain the 30-day correction period for waiving the penalties imposed by sections 6722 and 6723.

The proposed regulations do not affect or alter the tiered penalty rate schedule of section 6721. To ensure that a reduced penalty amount under section 6721 will apply, in the event that the IRS does not grant a reasonable cause waiver, a filer should file correct information returns with the IRS within 30 days after the required filing date, or before August 1 of the calendar year in which the required filing date occurs.

Proposed Effective Date

The proposed regulations apply to corrections of information returns made after the date of publication of a Treasury decision adopting the proposed regulations as final regulations in the **Federal Register**. However, filers may cite these rules for purposes of requesting a reasonable cause waiver prior to the date that the proposed regulations become final.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations, and because the proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before adoption of these proposed regulations as final regulations, the IRS will consider any electronic or written comments (a signed original and eight (8) copies) that a commenter submits timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they can be easier to understand. All comments will be available for public inspection and copying. Written comments on the proposed regulations are due by October 7, 2003.

A public hearing has been scheduled for October 21, 2003, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics for discussion and the time for each topic (a signed original and eight (8) copies) by September 30, 2003. Each person making comments will have 10 minutes to present comments. The IRS will prepare an agenda showing the scheduling of the speakers after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Robert A. Desilets, Jr., Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6724–1 is amended by:

1. Revising paragraph (d)(1)(ii)(D).

2. Adding paragraph (d)(3).

The revision and addition read as follows:

§ 301.6724–1 Reasonsable cause.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) Correcting the failure as promptly as possible upon removal of the impediment or discovery of the failure. A person may correct a failure by filing or correcting the information return, by furnishing or correcting the payee statement, or by providing or correcting the information to satisfy the specified information reporting requirement with respect to which the failure occurs. This paragraph (d)(1)(ii)(D) does not apply with respect to information that specific information reporting rules prohibit the filer from altering. See § 1.6045–4(i)(5) of this chapter. In the case of a waiver of a penalty imposed by section 6722 or 6723 of the Internal Revenue Code, correction is prompt if it is made within 30 days after the date of removal of the impediment or discovery of the failure. For purposes of section 6721 of the Internal Revenue Code, a correction is prompt if the Internal Revenue Service receives the correction—

(i) On or before 30 days after the required filing date;

(ii) On or before August 1 following that required filing date;

(iii) On or before the date or dates announced in guidance governing the electronic or magnetic filing of information returns;

(iv) On or before the date or dates announced in other guidance including forms and instructions; or

(v) Within 30 days after the date the impediment is removed or the failure is discovered if the correction is not submitted within the time frames set forth in paragraphs (d)(1)(ii)(D)(i) through (*iv*).

* * * * *

(3) [Reserved] For further guidance, *see* § 301.6724–1T(d)(3).

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–17229 Filed 7–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–004]

RIN 1625–AA00

Safety Zone; Beverly Homecoming Fireworks—Beverly, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Beverly Homecoming Fireworks on August 10, 2003 in Beverly, MA. The safety zone would temporarily close all waters of Beverly Harbor within a 400-yard radius of the fireworks barge located at position 42°32′36″ N, 070°51′50″ W, to ensure the safety of life and property during the event. This safety zone is intended to restrict vessels from the area encompassed by the safety zone for the duration of the fireworks display by prohibiting entry of vessels into or within this portion of Beverly Harbor during the closure period.

DATES: Comments and related material must reach the Coast Guard on or before August 8, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Information

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

This regulation proposes to establish a safety zone in Beverly Harbor within a 400-yard radius of the fireworks barge located at an approximate position 42°32′36″ N, 070°51′50″ W. The barge will be anchored.

The zone would restrict movement within this portion of Beverly Harbor and is needed to protect life and property of the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the safety zone during the effective periods. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Discussion of Proposed Rule

The safety zone would be in effect from 8 p.m. until 11 p.m. on August 10, 2003.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not

reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation would prevent traffic from transiting a portion of Beverly Harbor during the effective periods, the effects of this regulation would not be significant for several reasons: the minimal time that vessels will be restricted from the area, vessels may safely transit outside of the safety zone, and advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Beverly Harbor on August 10, 2003. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can safely pass outside of the safety zone during the effective periods, the periods are limited in duration, and advance notifications which would be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Daniel Dugery at the address listed under **ADDRESSES.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary section 165.T01–004 to read as follows:

§ 165.T01–004 Safety Zone: Beverly Homecoming Fireworks—Beverly, Massachusetts.

(a) *Location.* The following area is a safety zone:

All waters of Beverly Harbor within a 400-yard radius of the fireworks barge located at position 42°32′36″ N, 070°51′ 50″ W. All coordinates are North American Datum 1983.

(b) *Effective date.* This section is effective from 8 p.m. until 11 p.m. on August 10, 2003.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Dated: June 9, 2003.

Brian M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 03–17367 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD146–3100, FRL–7525–9]

Approval and Promulgation of Implementation Plans; Maryland; Revised Mobile Source Inventories and Motor Vehicle Emissions Budgets for 2005 Developed Using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maryland State Implementation Plan (SIP). Specifically, EPA is proposing approval of revised mobile emission inventories and 2005 motor vehicle emissions budgets which have been developed using MOBILE6, an updated model for calculating mobile emissions of ozone precursors. These inventories and associated motor vehicle emissions budgets are part of the 1-hour ozone attainment plans approved for the Metropolitan Baltimore nonattainment area (the Baltimore area) and the Cecil County portion of the Philadelphia-Wilmington-Trenton nonattainment area (the Philadelphia area). The intended effect of this action is to approve SIP revisions that will better enable the State of Maryland to continue to plan for attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone in the Baltimore area and the Cecil County portion of the Philadelphia area. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before August 8, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Robert Kramer, Chief, Energy, Radiation and Indoor Environment, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *Kramer.Robert@EPA.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230. The documents can also be viewed at the Maryland Department of the Environment's web site at: *http://www.mde.state.md.us/Programs/AirPrograms/air_planning/index.asp.*

FOR FURTHER INFORMATION CONTACT: Martin T. Kotsch, Energy, Radiation and Indoor Environment Branch, U.S. Environmental Protection Agency, 1650 Arch Street, Mail Code 3AP23, Philadelphia Pennsylvania 19103–20209, (215) 814–3335, or by e-mail at *Kotsch.Martin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The MOBILE model is an EPA emissions factor model for estimating pollution from on-road motor vehicles in states outside of California. The MOBILE model calculates emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs. The MOBILE model is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policies and programs at the local, state and national level. Inventories based on MOBILE are also used to meet the federal Clean Air Act's SIP and transportation conformity requirements.

The MOBILE model was first developed in 1978. It has been updated many times to reflect changes in the vehicle fleet and fuels, to incorporate EPA's growing understanding of vehicle emissions, and to cover new emissions regulations and modeling needs. EPA officially released the MOBILE6 motor vehicle emissions factor model on January 29, 2002 (67 FR 4254). Although some minor updates were made in 1996 with the release of MOBILE5b, MOBILE6 is the first major revision to MOBILE since MOBILE5a was released in 1993.

In November of 1999, EPA issued two memoranda [1] to articulate its policy regarding states that incorporated MOBILE5-based interim Tier 2 standard [2] benefits into their attainment demonstration plans and those plans' associated motor vehicle emissions budgets (budgets). EPA has implemented this policy in all ozone nonattainment areas where a state assumed federal Tier 2 benefits in its attainment demonstration plans according to EPA's April 2000 MOBILE5 guidance, ''MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5.'' All states whose attainment demonstrations or maintenance plans include interim MOBILE5-based estimates of the Tier 2 standards were required to revise and resubmit their budgets within either 1 or 2 years of the final release of MOBILE6.

On October 29, 2001 (66 FR 54596), EPA approved the attainment demonstration plan submitted by the State of Maryland for the Philadelphia area which includes Cecil County, Maryland. On October 30, 2001 (66 FR 54687), EPA approved the attainment demonstration plan submitted by the State of Maryland for the Baltimore area. Both of these attainment plans included, among other things, interim MOBILE5-based budgets which assumed estimates of the benefits of the Tier 2 standards.

II. Summary of the SIP Revisions and EPA's Evaluation

A. The Revised Emission Inventories

On May 28, 2003, the State of Maryland submitted proposed SIP revisions, and requested that EPA parallel process its approval of those SIP revisions concurrent with the State's process for amending its SIP. These proposed SIP revisions revise the 1990 and 2005 motor vehicle emissions inventories and the 2005 motor vehicle emissions budgets using the MOBILE6 model. The May 28, 2003 submittal demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support the demonstrations of attainment of the 1-hour ozone NAAQS for the Baltimore and Philadelphia areas by 2005.

Table 1 below summarizes the revised motor vehicle emissions inventories by nonattainment area in tons per summer day (tpd). These revised inventories were developed using the latest

[1] Memoranda, ''Guidance on Motor Vehicle Emissions Budgets in 1–Hour Ozone Attainment Demonstrations,'' issued November 3, 1999, and ''1–Hour Ozone Attainment Demonstrations and Tier2/Sulfur Rulemaking,'' issued November 8, 1999. Copies of these memoranda can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

[2] The final rule on Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements (''Tier 2 standards'') for passenger cars, light trucks, and larger passenger vehicles was published on February 10, 2000 (65 FR 6698).

planning assumptions, including 2002 vehicle registration data, vehicle miles traveled (VMT), speeds, fleet mix, and SIP control measures.

TABLE 1.—MARYLAND'S REVISED MOTOR VEHICLE EMISSIONS INVENTORIES

Nonattainment area	1990 (tpd)		2005 (tpd)	
	VOC	NO_X	VOC	NO_X
Baltimore	165.14	228.21	55.3	146.9
Cecil County	8.6	17.3	3.0	11.3

EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity''[3] and ''Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas.''[4]

Consistent with this policy guidance, Maryland's May 28, 2003 submittal includes a relative reduction comparison to show that its 1-Hour Ozone Attainment Demonstration Plan continues to demonstrate attainment using revised MOBILE6 inventories for the Baltimore area and the Philadelphia area (Cecil County). The State's methodology for the relative reduction comparison consisted of comparing the new MOBILE6 inventories with the previously approved (64 FR 64028) MOBILE5 inventories for the Baltimore area and the Cecil County portion of the Philadelphia area to determine if attainment will still be predicted by the established 2005 attainment date. Specifically, the State calculated the relative reductions (expressed as percent reductions) in ozone precursors between the MOBILE5-based 1990 base year and attainment year inventory. These percent reductions were then compared to the percent reductions between the revised MOBILE6-based 1990 base year and attainment year inventories. It should again be noted that the latest planning assumptions were used in modeling for the State's relative reduction comparison.

Maryland's relative reduction comparison shows that for both the Baltimore area and the Cecil County portion of the Philadelphia area, the percent reductions in VOC emissions achieved in the revised MOBILE6-based inventories is higher than the percent reductions calculated with MOBILE5, however the percent reductions of NO_X emissions achieved in the revised MOBILE6-based inventories is lower than the percent reductions calculated with MOBILE5, thus a slight NO_X shortfall is indicated for both areas.

In support of Maryland's Phase I Ozone SIP for Cecil County and Baltimore, approved by EPA on September 19, 2001 (66 FR 48209) and September 26, 2001 (66 FR 49108) respectively, it was determined that reductions in both VOC and NO_X emissions are valuable and contribute toward attaining the 1-hour ozone standard. Based upon the emission inventories and using EPA guidance titled ''NO_X Substitution'' United States Environmental Protection Agency, Office of Air Quality Planning and Standards, dated December 1993, it was determined that for the Baltimore area approximately 1 ton of VOC emissions is equivalent to 1.44 tons of NO_X emissions, as emissions of those pollutants relate to their potential to form ozone. In Cecil County, approximately 1 ton of VOC emissions is equivalent to 1.35 tons of NO_X emissions, as emissions of those pollutants relate to their potential to form ozone.

Maryland's May 28, 2003 submittal shows that the shortfalls in the percent of NO_X emission reductions are offset by the excesses in percent of VOC emission reductions. As provided for under section 182(c)(2)(C) of the Clean Air Act and EPA's policy on substitution of ozone precursor emission reductions, the State submittal demonstrates that excesses of VOC reductions are available and sufficient to account for the shortfalls in NO_X reductions calculated using the 1 to 1.44 and 1 to 1.35 ratios for the Baltimore area and Cecil County, respectively. Thus, when MOBILE6 is used, the required mobile emission reductions needed to attain the 1-hour ozone NAAQS are still achieved for the Baltimore and Philadelphia areas, and Maryland's attainment demonstration SIPs continue to demonstrate attainment.

EPA's policy guidance also required the State to consider whether growth and control strategy assumptions for non-motor vehicle sources (*i.e.*, point, area, and non-road mobile sources) were still accurate at the time the May 28, 2003 submittal was developed. Maryland reviewed the growth and control strategy assumptions for non-motor vehicle sources, and concluded that these assumptions continue to be valid for its 1-hour Ozone Attainment Demonstrations.

Maryland's May 28, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment date of 2005 for both the Baltimore and Philadelphia areas (Cecil County).

B. The Revised Mobile Budgets

For the Baltimore area and Philadelphia area (Cecil County) attainment plans, the mobile budgets are the on-road components of VOC and NO_X emissions of the 2005 attainment inventories.

Table 2 below summarizes Maryland's revised budgets contained in the May 28, 2003 submittal. These budgets were developed using the latest planning assumptions, including 2002 vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. Because Maryland's May 28, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment date of November 15, 2005 for both the Baltimore and Philadelphia areas (Cecil County), EPA is proposing to approve these budgets.

[3] Memorandum, ''Policy Guidance on the Use of MOBILE6 for SIP development and Transportation Conformity,'' issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

[4] Memorandum, ''Clarification of Policy Guidance for MOBILE6 SIPs in Mid-course Review Areas,'' issued February 12, 2003. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

TABLE 2.—MARYLAND MOTOR VEHICLE EMISSIONS BUDGETS

Nonattainment Area	2005 Attainment (tpd)	
	VOC	NO_X
Baltimore	55.3	146.9
Cecil County	3.0	11.3

III. Proposed EPA Action

EPA's review of this material indicates that Maryland has demonstrated that its revised 1-Hour Attainment Demonstration SIPs for the Baltimore area and the Philadelphia area (Cecil County) continue to demonstrate attainment while incorporating the revised MOBILE6 inventories. EPA is proposing to approve the Maryland SIP revisions which were submitted on May 28, 2003 and revise Maryland's 1990 and 2005 motor vehicle emission inventories and 2005 motor vehicle emissions budgets for the Baltimore area and Cecil County using MOBILE6. These revisions are being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the State's procedures for amending its SIP. If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Maryland and submitted formally to EPA for incorporation into the SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number MD146–3100 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *Kramer.Robert@EPA.gov,* attention MD146–3100. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulations.gov. Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at http://www.regulations.gov, then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This rule proposing to approve Maryland's revised 1990 and 2005 motor vehicle emission inventories and 2005 motor vehicle emissions budgets using MOBILE6 for the Baltimore area and Cecil County does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: June 27, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–17340 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–60, GA–61–200332(b); FRL–7524–5]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Georgia on July 1, 2002, and January 10, 2003. These submittals contain revisions to Georgia's Rules for Air Quality Control and Rules for Enhanced Inspection and Maintenance. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as a noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 8, 2003.

ADDRESSES: Comments may be submitted by mail to: Scott M. Martin; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or thorough hand delivery/courier. Please follow the detailed instructions described in the direct final rule, Supplementary Information section [Part (I)(B)(1)(i) through (iii)] which is published in the Rules Section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: June 26, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–17205 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–154–1–7590; FRL–7525–5]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule (PBR), Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions of the Texas State Implementation Plan (SIP). The plan revisions include changes that Texas adopted to address deficiencies that were identified on January 7, 2002, and other changes adopted by Texas to regulations that include provisions for PBR and standard permits. This includes revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA on April 29, 1994; August 17, 1994; September 20, 1995; April 19, 1996; May 21, 1997; July 22, 1998; January 3, 2000; September 11, 2000; October 4, 2001; July 25, 2001; and December 9, 2002. This action is being taken under section 110 of the Federal Clean Air Act (the Act, or CAA).

DATES: The EPA must receive your written comments on this proposal no later than August 8, 2003.

ADDRESSES: Comments may be submitted to Guy Donaldson, Acting Section Chief, Air Permits Section, Environmental Protection Agency, Region 6, Air Permits Section (6PD-R), 1445 Ross Avenue, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier. Please follow the detailed instructions described in Part (I)(B)(1)(i) through (iii) of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell of the Air Permits Section at (214) 665–7212, or at *spruiell.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. The EPA has established an official public rulemaking file for this action under TX–154–1–7590. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Permits Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm excluding Federal Holidays.

2. Copies of the State submittal and EPA's Technical Support Document (TSD) are also available for public inspection during normal business hours, by appointment at the State Air Agency. TCEQ, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and that are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection. The EPA will process materials marked as CBI as described in section C.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking TX–154–1–7590'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *Electronic Mail (E-mail).* Comments may be sent by e-mail to *spruiell.stanley@epa.gov*). Please include the text ''Public comment on proposed rulemaking TX–154–1–7590'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly

without going through the Regulations.gov Web site, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov*. Your use of the Regulations.gov Web Site is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The web-based system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733; ''Public comment on proposed rulemaking TX–154–1–7590'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section above.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Is a SIP?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the Federal national ambient air quality standards. These ambient standards are established by EPA pursuant to sections 108 and 109 of the Act, and there are currently standards for six criteria pollutants: carbon monoxide (CO), nitrogen dioxide (NO_2), ozone, lead, particulate matter (PM_{10}), and sulfur dioxide (SO_2).

Each State must submit these regulations and control strategies to us for approval and incorporation into the State's Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

III. What Is the Federal Approval Process for a SIP?

In order to be incorporated into the Federally-enforceable SIP, States must formally adopt regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and formal adoption by a State-authorized rulemaking body.

Once a State regulation or control strategy is adopted, the State submits it to us for approval and for inclusion into its SIP. We must then provide for public notice and comment regarding our proposed action on the State submission. If we receive adverse comments, we must address them prior to taking final Federal action.

All State regulations and supporting information we approve under section 110 of the Act are incorporated into the Federally-approved SIP. Records for such SIP actions are maintained in the CFR at title 40, part 52, entitled ''Approval and Promulgations of State Implementation Plans.'' The actual State regulations which are approved are not reproduced in their entirety in the CFR, but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

IV. What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a State responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the Act.

V. What Is Being Addressed in This Document?

In today's action we are proposing to approve into the Texas SIP revisions to Chapter 106—Permits by Rule, Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, and Chapter 122—Federal Operating Permits. Some of these revisions were made to correct certain deficiencies identified by EPA in an NOD for Texas' title V Operating Permit Program. The EPA issued the NOD on January 7, 2002, (67 FR 723) under its

authority at 40 CFR 70.10(b). The NOD was based upon EPA's finding that several State requirements for the title V operating permits program did not meet the minimum Federal requirements of 40 CFR part 70 and the Act. Texas adopted rule revisions to address the deficiencies identified in the January 7, 2002, NOD. Texas submitted parts of these rule changes as revisions to its SIP on December 9, 2002. This includes revisions to Section 106.6—Registration of Emissions, Section 116.115—General and Special Conditions, Section 116.611—Registration to Use a Standard Permit, and Section 122.122—Potential to Emit.

The December 9, 2002, submittal also includes revisions to Texas' title V Operating Permits Program. Elsewhere in today's **Federal Register**, we are proposing to approve these and other regulations which revise Texas' Operating Permits Program.

The December 9, 2002, SIP submittal included revisions to Texas' regulations for PBR and Texas' regulations for Standard Permits. In order to approve the revised regulations which affect the PBR and Standard Permits, EPA must approve earlier SIP submittals which include the adoption of Texas' programs for PBR and Standard Permits. Accordingly, we are also proposing to approve rules submitted by Texas under Chapter 106—Permits by Rule; Chapter 116, Subchapter F—Standard Permits; Section 116.14—Standard Permit Definitions in Chapter 116, Subchapter A—Definitions, and Sections 116.110 and 116.116 in Subchapter B—New Source Review Permits. Furthermore, the approval of the submitted provisions of Chapter 106 would replace the current SIP-approved Section 116.6—Exemptions. Accordingly, we are proposing to approve removal of Section 116.6 from the SIP.

In today's action, consistent with the following discussion, we are proposing to approve these revisions to Chapters 106, 116, and 122 as part of the Texas SIP.

VI. Proposed Action Concerning the Notice of Deficiency (NOD) Issues

A. What Were the Deficiencies Which Require a SIP Revision?

Many stationary source requirements of the Act apply only to major sources, which are those sources with the potential to emit (PTE) an air pollutant exceeds a threshold emissions level specified in the Act. However, such sources may legally avoid program requirements by taking Federally-enforceable permit conditions which limit its PTE to a level below the applicable major source threshold. Those permit conditions, if violated, are subject to enforcement by EPA, the State or local agency, or by citizens. Federal enforceability ensures the conditions placed on emissions to limit a source's PTE are enforceable as both a legal and practical matter.

Texas has adopted regulations which enable a source to register and certify that its PTE is below that applicable major source threshold. These certified registrations contain a description of how the source will limit its PTE below the major source threshold and include appropriate operation and production limitations (106 and 116 do not require this), appropriate monitoring and recordkeeping which demonstrates compliance with the operation and production limits which the source is certifying to meet. Texas provides for such registration in Sections 106.6—Registration of Emissions, 116.611—Registration to Use a Standard Permit, and 122.122—PTE.

In the NOD, we informed Texas that Section 122.122 was not practicably enforceable because the regulation allowed a facility to keep all documentation of its PTE limitation on site without providing any notification to the State or EPA. Therefore, neither the public, TCEQ, nor EPA could determine the PTE limitation without going to the site. A facility could change its PTE limit several times without the public or TCEQ knowing about the change. Therefore, these limitations were not practically enforceable, and TCEQ has revised this regulation to make it practically enforceable. The NOD required that the revised regulation be approved into the SIP before it and the registrations are Federally enforceable. *See* 67 FR 735.

B. How Did Texas Address These Deficiencies?

To address this deficiency, TCEQ amended Section 122.122 to require certified registrations of emissions establishing a Federally-enforceable emission limit to be submitted to the Commission. In addition, the Commission submitted the amended Section 122.122 to EPA as a revision to the Texas SIP. Section 122.122 states that all representations with regard to emissions, production or operational limits, monitoring, and reporting shall become conditions upon which the stationary source shall operate and shall include documentation of the basis of emission rates (Section 122.122(b)-(c)).

The Commission also amended Chapter 106 (Section 106.6) and Chapter 116 (Sections 116.115[1] and 116.611) because they also contain language relating to documentation requirements for establishing Federally-enforceable PTE limits for PBR and for standard permits. These changes were also submitted to EPA as a SIP revision. These rules state that all representations with regard to construction plans, operating procedures, and maximum emissions rates in any certified registration under this section become conditions upon which the facility permitted by rule or a standard permit shall be constructed and operated and that registrations must include documentation of the basis of emission rates listed on the registration. Registrations must be submitted on the required form. *See* Sections 106.6(c)-(d) and 116.611(a) and (c).

C. Do the Changes Correct the Deficiencies?

The TCEQ has revised Chapters 106, 116, and 122 to require registrations to be submitted to the Executive Director, to the appropriate Commission regional office, and all local air pollution control agencies, and a copy to be maintained on-site of the facility. The rule therefore satisfies the legal requirement for practical enforceability which was cited in the NOD. Accordingly, we are proposing to approve the Sections 106.6, 116.611, and 122.122 and the amendments to Section 116.115 as revisions to the Texas SIP and to find that the revisions to Section 122.122 satisfy Texas' requirement to correct the identified program deficiency identified in the January 7, 2001, NOD.

VII. Proposal To Approve Chapter 106—Permits by Rule

A. What Are We Proposing To Approve?

We propose to approve provisions of Subchapter A (General Requirements) under Chapter 106 (PBR) which Texas submitted July 25, 2002, and revisions submitted December 9, 2002. This includes the following Sections: Section 106.1—Purpose, Section 106.2—Applicability, Section 106.4—Requirements for Permitting by Rule, Section 106.5—Public Notice, Section 106.6—Registration of Emissions, Section 106.8—Recordkeeping, and Section 106.13—References to Standard Exemptions.

[1] Texas revised Section 116.115 and paragraph (b)(2)(F)(vi) which provides that persons certifying and registering a Federally enforceable emission limitation under Section 116.611 must retain records demonstrating compliance with the registrations for at least five years. We discuss this change to Section 116.115 in section VIII.B.2 of this preamble.

B. What Is the History of PBR and Chapter 106?

Prior to 1993, Standard Exemptions were addressed in Section 116.6 which we approved August 13, 1982 (47 FR 35193). In a SIP submittal dated August 31, 1993, Texas recodified the provisions for Standard Exemptions into Subchapter C of Chapter 116. In 1996, Texas subsequently recodified its provisions for Standard Exemptions into Chapter 106. In 2000, Texas redesignated the Standard Exemptions to PBR.

On July 25, 2002, Texas submitted Subchapter A which includes Sections 106.1, 106.2, 106.4, 106.5, 106.6, 106.8, and 106.13. On December 9, 2002, Texas submitted revisions to Section 106.6 which address procedures by which registrations of emissions effectively limit a source's PTE. Because these Sections replace Subchapter C of Section 116, as submitted August 31, 1993, there is no need for EPA to act on Subchapter C of Section 116.

C. What Is a PBR?

A PBR is a permit which is adopted under Chapter 106. Chapter 106 provides an alternative process for approving the construction of new and modified facilities or changes within facilities which TCEQ has determined will not make a significant contribution of air contaminants to the atmosphere. These provisions provide a streamlined mechanism for approving the construction of certain small sources which would otherwise be required to apply for and receive a permit before commencing construction or modification.

A PBR is available only to sources which belong in categories for which TCEQ has adopted a PBR in Chapter 106. A PBR is available only to a facility that is authorized to emit no more that 250 tons per year (tpy) of CO or NO_X; or 25 tpy of volatile organic compounds (VOC), SO_2, or inhalable PM_{10}; or 25 tpy of any other air contaminant, except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen (Section 106.4(a)(1)). A PBR is not available to a facility or group of facilities which undergo a change which constitutes a new major source or major modification under title I of the Act, Part C (Prevention of Significant Deterioration of Air Quality) or part D (Nonattainment review) (Section 106.(a)(2)-(3)). Such major source or major modification must comply with the applicable permitting requirements under Chapter 116, Subchapter B, which meet the new source review requirements of title I, part C or part D of the Act. A facility which qualifies for a PBR must also comply with all applicable provisions of section 111 of the Act (new source performance standards) and section 112 of the Act (Hazardous Air Pollutants) (Section 106.4(a)(6)). Furthermore, a facility which qualifies for a PBR must comply with all rules and regulations of TCEQ (Section 106.4(c)).

D. Are Texas' PBR Approvable?

The PBR are approvable as meeting the provisions of 40 CFR Subpart I—Review of New Sources and Modifications (Subpart I).[2] Section 106.1 provides that only certain types of facilities or changes within facilities which do not make a significant contribution of air contaminants to the atmosphere are eligible for a PBR. This satisfies the requirements of 40 CFR 51.160(a) which provides that the SIP must include procedures that enable the permitting authority to determine whether the construction or modification will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a national ambient air quality standard.

Section 106.4 further provides additional requirements that a facility must meet to qualify for a PBR. Such requirements include:

- Limiting PBR only to facilities which are authorized to emit no more that 250 tpy of CO or NO_X; or 25 tpy of VOCs, SO_2, or inhalable PM_{10}; or 25 tpy of any other air contaminant, except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen. This meets 40 CFR 51.160(e), which provides that the SIP must identify the types and sizes of facilities which will be subject to review.
- Any facility or group of facilities which constitutes a new major source of major modification under Part C or D of title I of the Act must be permitted under regulations for Nonattainment Review or Prevention of Significant Deterioration of Air Quality. Such sources are not eligible for a PBR. This meets 40 CFR 51.165 (Permit requirements) and 51.166 (Prevention of significant deterioration of air quality).
- Sources qualifying for a PBR must meet all applicable requirements under section 111 of the Act (new source performance standards) and section 112 of the Act (hazardous air pollutants), and must comply with all rules of TCEQ. This satisfies the requirements of 40 CFR 51.160(d) which require that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.
- Subchapter A includes all the administrative requirements which support the issuance and enforcement of PBR. This includes Registration of Emissions which limit a source's PTE (Section 106.6), and Recordkeeping, which requires each source subject to a PBR to maintain records sufficient to demonstrate compliance with all conditions of the applicable PBR. These provisions satisfy the requirements in 40 CFR 51.163, which requires the plan to contain the administrative procedures that will be followed in making the determination under 40 CFR 51.160(a). It also meets the requirements of 40 CFR 51.211 which requires the owner or operator to maintain records and to periodically report to the State the nature and amounts of emissions and information necessary to determine whether a source is in compliance.
- All PBR must be adopted or revised through rulemaking to incorporate the PBR into the applicable Subchapters under Chapter 106. Such new or revised PBR must undergo public notice and a 30-day comment period, and TCEQ must address all comments received from the public before finalizing its action to issue or revise a PBR. This meets the requirements of 40 CFR 51.161, which requires the permitting authority to provide for opportunity for public comment on the information submitted and the State's analysis of the effect on construction or modification on ambient air quality.

The TSD contains further information on how Subchapter A meets the requirements of Subpart I.

E. Why Are We Only Approving Subchapter A of Chapter 106?

Texas submitted Subchapter A because that Subchapter contains the process by which TCEQ will issue or modify PBR. Subpart A contains the provisions which apply to all PBR and which ensure that individual PBR meet the requirements of subpart I. The individual PBR are adopted in Subchapters B through X, of Chapter 106.[3] In 1996, Texas codified its existing Standard Exemptions into Subchapters B through X and redesignated them to PBR in 2000. Because these existing Standard Exemptions were adopted under Section 116.6, which is currently SIP-approved, they meet the

[2] Subpart I includes the provisions that a SIP must include to address the construction of new sources and the modification of existing sources. Subpart I includes Sections 51.160–51.166.

[3] Subchapters B through X of Chapter 106 were not submitted to EPA approval as SIP revisions.

requirements of subpart I. Furthermore, new and amended PBR are adopted in accordance with the general requirements in Subchapter A, which meet the applicable requirements of subpart I as discussed above. Accordingly, our approval of Subchapter A of Chapter 106 is sufficient to assure that the PBR meet the requirements in subpart I.

F. What Other Actions Are We Proposing in Relation to PBR?

The provisions for PBR in Chapter 106 replace the former provisions for exemptions from permitting which we had approved in Section 116.6—Exemptions. Because Chapter 106 replaced the exemptions previously authorized under Section 116.6, we are proposing to remove Section 116.6 from the SIP.

VIII. Proposal To Approve Chapter 116—Control of Air Pollution by Permits for New Construction or Modification

A. Subchapter A—Definitions

1. What Are We Proposing To Approve?

We propose to approve Section 116.14—Standard Permit Definitions. Section 116.14 includes definitions of the following terms as they are used in Subchapter F—Standard Permits: off-plant receptor, oil and gas facility, and sulfur recovery unit.

2. Are These Definitions Approvable?

These definitions are approvable based upon their being comparable to corresponding terms defined elsewhere in EPA regulations. Specifically, the definition of ''off-plant receptor'' is consistent with the definition of ''ambient air'' in 40 CFR 50.1(e). The definitions of ''oil and gas facility'' and ''sulfur recovery unit'' are consistent with the terms ''natural gas processing plant'' and ''sulfur recovery plant'' as defined in 40 CFR 60.630 and 60.641 respectively. The TSD contains further information on our basis for proposing to approve these definitions. We are proposing approval of these definitions as support for the provisions of Subchapter F (Standard Permits) which we are also approving.

B. Subchapter B—New Source Review Permits (for minor sources)

1. What Are We Proposing To Approve?

We are proposing to approve revisions to the following: Section 116.110—Applicability; Section 116.115—General and Special Conditions, and Section 116.116—Changes to Facilities.

2. What Is Our Basis for Approving These Changes?

a. Section 116.110—Applicability. We propose to approve revisions to Section 116.110,[4] which Texas submitted April 29, 1994; July 22, 1998; and September 11, 2000. These changes revise Section 116.110 to add or revise references to provisions which relate to PBR and Standard Permits, which we are proposing to approve elsewhere in this action. We propose the following:

- Approval of Paragraph (2) of Section 116.110(a) which incorporates references to conditions of Standard Permits. This meets 40 CFR 51.160(e), which provides that the SIP must identify the types and sizes of facilities which will be subject to review.
- Approval of nonsubstantive revision to Section 116.110(a)(4), to change the reference from ''exemptions from permitting'' to ''permits by rule.''
- Approve a nonsubstantive change to Section 116.110(b) to remove a reference to flexible permits.

b. Section 116.115—General and Special Conditions.

We are proposing to approve revisions to Section 116.115,[5] which Texas submitted April 29, 1994; August 17, 1994; July 22, 1998; and December 9, 2002; as follows:

- Approval of Subsection (b) to Section 116.115, as submitted July 22, 1998; and December 9, 2002; which incorporates the General Provisions that holders of permits, special permits, standard permits, and special exemptions must meet. Subsection (b) includes provisions relating to notification to the State concerning the progress of construction and start-up, requirements for sampling, and recordkeeping, requirements to meet emissions limits specified in the permit, requirements concerning maintenance of emission control, and compliance with rules.
- Approval of a Paragraph (b)(2)(F)(vi) (submitted December 9, 2002) which requires that a person who certifies and registers a Federally enforceable emission limitation under Section 116.611 must retain all records demonstrating compliance for at least five years.
- The above provisions meet the requirements of 40 CFR 51.163, 51.211, 51.212, and 51.230. See the TSD for more information concerning how these requirements are met.

c. Section 116.116—Changes to Facilities.

We are proposing to approve revisions to Section 116.116,[6] which Texas submitted October 25, 1999;[7] and September 11, 2000; as follows:

- Approve nonsubstantive changes to Section 116.116(d) and (d)(1)–(2) to change the existing reference from ''exemptions from permitting'' to ''permits by rule.''
- Approve nonsubstantive changes to Section 116.116(c)(4)–(5) to correct a cross reference from Section 116.111(3) to 116.111(a)(2)(C).

C. Subchapter F—Standard Permits

1. What Are We Proposing To Approve?

We are proposing to approve the following Sections in Subchapter F of Chapter 116: Section 116.601—Types of Standard Permits, Section 116.602—Issuance of Standard Permits, Section 116.603—Public Participation in Issuance of Standard Permits, Section 116.604—Duration and Renewal of Registrations of Standard Permits, Section 116.605—Standard Permit Amendment and Revocation, Section 116.606—Delegation, Section 116.610—Applicability, Section 116.611—Registration to Use a Standard Permit, Section 116.614—Standard Permit Fees, and Section 116.615—General Conditions.

2. What Is a Standard Permit?

A Standard Permit is a permit which is adopted under

Chapter 116, Subchapter F. Subchapter F provides an alternative process for approving the construction of certain categories of new and modified sources for which TCEQ has adopted a Standard Permit. These provisions provide for a streamlined mechanism for approving the construction of certain sources within categories which contain numerous similar sources.

[4] On October 18, 2002 (67 FR 58709), EPA approved Section 116.110, as adopted June 17, 1998. We did not approve Sections 116.110(a)(2), (a)(3), and (c).

[5] On October 18, 2002 (67 FR 58709), EPA approved Section 116.115, as adopted June 17, 1998. We did not approve Sections 116.115(b), (c)(2)(A)(i), and (c)(2)(A)(ii)(I). In this action, we are not approving Section 116.115(b)(2)(C)(iii). This provision relates to Mass Emissions Cap and Trade Program and was not adopted in the submittals that we are proposing to approve in this action. We will address Section 116.115(b)(2)(C)(iii) in a separate action.

[6] On October 18, 2002 (67 FR 58709), EPA approved Section 116.116, as adopted June 17, 1998. We did not approve Sections 116.116(b)(3) and (e)–(f).

[7] We are proposing to approve only the changes to Section 116.116, submitted October 24, 1999, which relate to PBR. This includes changes to Section 116.116(d) and (d)(1)–(2). We are taking no action on changes to Section 116.116(b)(3)–(4), submitted October 24, 1999, because these provisions do not relate to PBR or to standard permits. We will address Section 116.116(b)(3)–(4) in a separate action.

A Standard Permit is available to sources which belong in categories for which TCEQ has adopted a Standard Permit under Subchapter F of Chapter 116. A Standard Permit is not available to a facility or group of facilities which undergo a change which constitutes a new major source or major modification under title I of the Act, Part C (Prevention of Significant Deterioration of Air Quality) or part D (Nonattainment review). Such major source or major modification must comply with the applicable permitting requirements under Chapter 116, Subchapter B, which meet the new source review requirements title I, part C or part D of the Act. A facility which qualifies for a Standard Permit must also comply with all applicable provisions of section 111 of the Act (new source performance standards) and section 112 of the Act (Hazardous Air Pollutants). Furthermore, a facility which qualifies for a Standard Permit must comply with all rules and regulations of TCEQ.

3. Are the Provisions for Standard Permits Approvable?

Texas' Standard Permits are approvable as meeting the provisions of 40 CFR Subpart I—Review of New Sources and Modifications (Subpart I). Subchapter F provides the requirements that a facility must meet to qualify for a Standard Permit. Such requirements include:

- Any facility or group of facilities which constitutes a new major source or major modification under Part C or D of title I of the Act must be permitted under regulations for Nonattainment Review of Prevention of Significant Deterioration of Air Quality. Such sources are not eligible for a Standard Permit. This meets 40 CFR 51.165 (Permit requirements) and 51.166 (Prevention of significant deterioration of air quality).
- Sources qualifying for a Standard Permit must meet all applicable requirements under section 111 of the Act (new source performance standards) and section 112 of the Act (hazardous air pollutants), and must comply with all rules of TCEQ. This satisfies the requirements of 40 CFR 51.160(d) which requires that approval or any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.
- Subchapter F includes all the administrative requirements which support the issuance and enforcement of a Standard Permit. This includes Registration of Emissions which limit a source's PTE (Section 116.611) and Recordkeeping, which requires each source subject to a Standard Permit to maintain records sufficient to demonstrate compliance with all conditions of the applicable Standard Permit. These provisions satisfy the requirements in 40 CFR 51.163 which requires the plan to contain the administrative procedures that will be followed in making the determination under 40 CFR 51.160(a). It also meets the requirements of 40 CFR 51.211 which requires the owner or operator to maintain records and to periodically report to the State the nature and amounts of emissions and information necessary to determine whether a source is in compliance.
- All Standard Permits are adopted or revised through the process described in Sections 116.601–116.605. Such new or revised Standard Permits must undergo public notice and a 30-day comment period, and TCEQ must address all comments received from the public before finalizing its action to issue or revise a Standard Permit. This meets the requirements of 40 CFR 51.161 which requires the permitting authority to provide for opportunity for public comment on the information submitted and the State's analysis of the effect on construction or modification on ambient air quality.

The TSD contains further information on how Subchapter A meets the requirements of Subpart I.

4. What Sections in Subchapter F Are We Not Proposing To Approve in This Action?

We are not proposing to approve the following Sections in Subchapter F: Section 116.617—Standard Permits for Pollution Control Projects, Section 116.620—Installation and/or Modification of Oil and Gas Facilities, and Section 116.621—Municipal Solid Waste Landfills. Approval of these sections is not necessary for our approval of Texas' PBR and Standard Permits regulations submitted to EPA on December 9, 2002. Sections 116.617, 116.620, and 116.621 will be addressed in a separate action.

As stated previously, we are proposing to approve changes which Texas submitted December 9, 2002, some of which address the deficiencies that we identified in our January 7, 2002, NOD. In that submittal, Texas submitted revisions to Section 116.611—Registration to Use a Standard Permit. Section 116.611 is part of Subchapter F -Standard Permits. To date, we have not approved the provisions relating to Standard Permits, including the earlier submittals of Section 116.611. Section 116.611 is part of, and dependent upon, other provisions of Subchapter F, and consequently Section 116.611 cannot stand alone. Therefore, we must approve other provisions of Subchapter F, including the earlier submittals of Section 116.611, which contain the process by which Texas issues and modifies Standard Permits when we approve the revisions to Section 116.611 which Texas submitted December 9, 2002.

In order to approve Section 116.611, we are addressing the provisions of Subchapter F which include the process for issuing and modifying Standard Permits. We are today proposing to approve the provisions for issuing and modifying Standard Permits which are found in Sections 116.601–116.606, 116.610–116.611, and 116.614–116.615.

Sections 116.617, 116.620, and 116.621 are specific permits that Texas has issued. These Sections do not include any provisions relating to the process by which they (or any Standard Permit) must be issued of modified. The Sections, which address the process for issuing and modifying Standard Permits (as identified above), are not dependent on the provisions of Sections 116.617, 116.620, and 116.621, and can be implemented without the approval of Sections 116.617, 116.620, and 116.621. Thus, today's proposal does not include action on Sections 116.617, 116.620, and 116.621. We will review and take appropriate action on Sections 116.617, 116.620, and 116.621, separately.

IX. Proposal To Approve Chapter 122—Federal Operating Permits

A. What Are We Proposing To Approve?

We are proposing to approve Section 122.122—PTE, as submitted December 9, 2002.

B. Is Section 122.122 Approvable?

Section 122.122 contains provisions by which a source may register and certify limitations on its production and operation which would limit its PTE below the level which would make it a ''major source'' as defined under 40 CFR 70.2. Texas revised the rule to address a deficiency identified in the NOD. The changes that were made and our evaluation of why the changes are approvable are discussed in section VI of this preamble.

X. What Is Our Proposed Action?

We are proposing the approval of revisions of the Texas SIP to address Texas' SIP submittal dated December 9, 2002. This includes Sections 106.6, revisions to Section 116.115, and Sections 116.611 and 122.122. These SIP revisions relate to Texas' programs

for PBR, Standard Permits, and Operating Permits.

The regulations allow a source to limit its PTE of a pollutant below the level which would make it a major source as defined in the Act. This includes regulations which Texas revised to allow an owner or operator of a source to register and certify restrictions and limitations that the owner or operator will meet to maintain its PTE below the major source threshold. The changes require the owner or operator to submit the certified registrations to the Executive Director of TCEQ, the appropriate TCEQ regional office, and to all local air pollution control agencies having jurisdiction over the site. The changes to Section 122.122 satisfactorily address the NOD by making the PTE limits in the certified registrations practically and Federally enforceable.

The revisions submitted December 9, 2002, are parts of Texas' regulations for PBR and Standard Permits, which EPA has not approved to date. Because the revisions concerning the certification and registration or PTE limits affect the regulations for PBR and Standard Permits, we also propose to approve other provisions of Chapters 106 and 116 which incorporate Texas' regulations for PBR and Standard Permits that Texas submitted to EPA on April 29, 1994; August 17, 1994; September 20, 1995; April 19, 1996; May 21, 1997; July 22, 1998; January 3, 2000; September 11, 2000; October 4, 2001; July 25, 2001; and December 9, 2002.

XI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–17339 Filed 7–8–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–154–2–7609; FRL–7525–4]

Proposed Approval of Revisions and Notice of Resolution of Deficiency for Clean Air Act Operating Permits Program in Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Texas title V Operating Permit Program submitted by the Texas Commission on Environmental Quality (TCEQ) on December 9, 2002. In a Notice of Deficiency (NOD) published on January 7, 2002, EPA notified Texas of EPA's finding that the State's periodic monitoring regulations, compliance assurance monitoring (CAM) regulations, periodic monitoring and CAM general operating permits (GOP), statement of basis requirement, applicable requirement definition and potential to emit (PTE) registration regulations did not meet the minimum Federal requirements of the Clean Air Act and the regulations for State operating permit programs. This action proposes approval of revisions TCEQ submitted to correct the identified deficiencies. Today's action also proposes approval of other revisions to the Texas title V Operating Permit Program submitted on December 9, 2002, which relate to concurrent review and credible evidence. The December 9, 2002, submittal also included revisions to the Texas State Implementation Plan (SIP). Elsewhere in today's **Federal Register**, we are proposing to approve those SIP revisions which were submitted on December 9, 2002.

DATES: The EPA must receive your written comments on this proposal no later than August 8, 2003.

ADDRESSES: Comments may be submitted to Guy Donaldson, Acting Section Chief, Air Permits Section, Environmental Protection Agency, Region 6, Air Permits Section (6PD-R), 1445 Ross Avenue, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier. Please follow the detailed

instructions described in Part (I)(B)(1)(i) through (iii) of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell of the Air Permits Section at (214) 665–7212, or at *spruiell.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout the document ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. The EPA has established an official public rulemaking file for this action under TX–154–2–7609. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Permits Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. The EPA requests that, if at all possible, you contact the rulemaking contact listed as the **FOR FURTHER INFORMATION CONTACT** section above to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm, excluding Federal Holidays.

2. Copies of the State submittal and EPA's Technical Support Document are also available for public inspection during normal business hours, by appointment at the State Air Agency. TCEQ, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and that are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection. The EPA will process material marked as CBI as described in section C.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking TX–154–2–7609'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *Electronic Mail (E-mail).* Comments may be sent by e-mail to Mr. Stanley M. Spruiell (spruiell.stanley@epa.gov). Please include the text ''Public comment on proposed rulemaking TX–154–2–7609'' in the subject line. The EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through the Regulations.gov website, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of the Regulations.gov Web site is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The web-based system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733. Please include the text ''Public comment on proposed rulemaking TX–154–2–7609'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through

Friday, 8:30 am to 4:30 pm excluding Federal Holidays.

C. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section above.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

The Clean Air Act (the Act) Amendments of 1990 required all States to develop Operating Permits Programs that meet title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Texas' Operating Permits Program was submitted in response to this directive on November 15, 1993. We promulgated interim approval of the Texas title V program on June 25, 1996 (61 FR 32693) and the program became effective on July 25, 1996. Subsequently, we promulgated full approval of the Texas title V program effective November 30, 2001 (66 FR 63318, December 6, 2001). As explained in the proposed and final full approval, we granted full approval based on our finding that Texas had corrected the deficiencies identified at the time of the interim approval (66 FR at 51897 (October 11, 2001); 66 FR 63319).

Since the interim approval, other deficiencies in the Texas title V program were identified. Section 502(i) of the Act and 40 CFR 70.10(b)(1) provide that whenever EPA makes a determination that a State is not adequately administering and enforcing its program in accordance with the requirements of title V, EPA shall issue a NOD.

The EPA published an NOD for Texas' title V Operating Permit Program on January 7, 2002 (67 FR 732). The NOD was based upon our finding that several State requirements did not meet the minimum Federal requirements of 40 CFR part 70 and the Act. The TCEQ adopted rule revisions to resolve the deficiencies identified in the January 7, 2002, NOD. These rule revisions became effective, as a matter of State law, on December 11, 2002. The TCEQ submitted these rule changes to EPA as a revision to its title V Operating Permit Program on December 9, 2002. The TCEQ also included, in the December 9, 2002, submittal, other regulatory revisions that strengthen Texas' program. We are proposing to approve the Texas rule revisions included in the December 9, 2002, submittal in today's action. The December 9, 2002, submittal also included provisions which TCEQ requested that we approve as revisions to its SIP. Elsewhere in today's **Federal Register**, we are proposing to approve those SIP revisions submitted on December 9, 2002. We have prepared a Technical Support Document (TSD) which contains a detailed analysis of our evaluation of this action. The TSD is available at the addresses listed above.

III. What Is Being Addressed in This Action?

In today's action, we are proposing to approve revisions as identified below which TCEQ adopted November 20, 2002 (submitted to EPA December 9, 2002) and to find that upon final SIP approval of two of the changes those revisions resolve the deficiencies identified in the January 7, 2002, NOD.

A. Periodic Monitoring Regulations

The requirement for periodic monitoring set forth in 40 CFR 70.6(a)(3)(i)(B) states that each title V permit must include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring.

The TCEQ previously implemented periodic monitoring requirements through a phased approach which used either a periodic monitoring GOP or on a case-by-case determination. As a result, all permits did not have periodic monitoring when they were issued. To address the NOD, TCEQ has revised 30 Texas Administrative Code (TAC) 122.132 and 122.142, and repealed 30 TAC 122.600, 122.604, 122.606, 122.608, 122.610, and 122.612 to ensure that all title V permits, including all GOPs, contain periodic monitoring requirements that meet the requirements of 40 CFR 70.6(a)(3)(i)(B) when issued. The TCEQ has repealed the periodic monitoring and CAM GOPs identified in the NOD and adopted Section 122.132(e)(13) to require permit applications to include periodic monitoring requirements consistent with part 70. The TCEQ has amended Section 122.142(c) and Section 122.602 to require periodic monitoring which is consistent with part 70 to be included in all title V permits, including GOPs, when the permit is issued. The revisions require that periodic monitoring be included in title V permits at initial issuance under Section 122.201, permit renewals under Section 122.243, permit reopenings under Section 122.231(a) and (b), significant revisions under Section 122.221, and at minor permit revisions under Section 122.217. We are today proposing to approve the revised rules and the State's repeals as a revision to Texas' title V program and to find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

B. CAM Regulations

CAM is implemented through 40 CFR part 64 and 40 CFR 70.6(a)(3)(i)(A) and requires title V permits to include ''all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including [40 CFR part] 64 * * *'' 40 CFR 64.5 provides that CAM applies at permit renewal unless the permit holder has not filed a title V permit application by April 20, 1998, or the title V permit application has not been determined to be administratively complete by April 20, 1998. CAM also applies to a title V permit holder who filed a significant permit revision under title V after April 20, 1998.

The TCEQ previously implemented CAM through either a CAM GOP or a case-by-case CAM determination. The TCEQ's use of a phased approach did not ensure that all permits would include CAM required by 40 CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5, because a facility did not have to apply for a CAM GOP until two years after the CAM GOP had been issued. To address the NOD, TCEQ has revised the Sections of Chapter 122 relating to application content and permit content, to ensure that all permits, including GOPs, include CAM requirements according to the schedule in 40 CFR 64.5. The TCEQ amended Section 122.132(e)(12) to specify that applications for units subject to CAM must be submitted according to the schedule specified in 40 CFR 64.5. The TCEQ amended Section 122.142(h) to require that permits contain CAM in accordance with the schedule in 40 CFR 64.5. The TCEQ adopted new Section 122.221(b)(4) to specify that the Executive Director may issue a significant permit revision if CAM is included for large pollutant-specific emission units, consistent with 40 CFR 64.5(a)(2). The TCEQ also adopted Section 122.147, which specifies the terms and conditions that apply to units subject to CAM requirements, and Section 122.604 which address CAM applicability. These new and revised rules require that all permits issued after the effective date of the rule include CAM according to the schedule in 40 CFR part 64. We are today proposing to approve the revised, amended, and new rules as a revision to Texas' title V program and to find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

C. Periodic Monitoring and CAM General Operating Permits

The content requirements for part 70 permits are set forth in 40 CFR 70.6 and include periodic monitoring and CAM as permit conditions of all title V permits. Also, 40 CFR 70.6(d)(1) provides that ''any general permit shall comply with all requirements applicable to other part 70 permits.'' The TCEQ previously implemented CAM and periodic monitoring requirements through CAM and periodic monitoring GOPs which did not meet title V's definition of, or requirements for, general permits. The terms and conditions of Texas' periodic monitoring GOPs and CAM GOPs contained only monitoring requirements, monitoring options, and related monitoring requirements for certain applicable requirements and therefore were missing a number of the requirements of 40 CFR 70.6.

To address the NOD, TCEQ amended Chapter 122 to require that all GOPs include periodic monitoring and CAM, and to eliminate the monitoring GOP process. To ensure that all permits are issued containing periodic monitoring and CAM, the TCEQ adopted amendments requiring periodic monitoring and CAM to be addressed in permit applications and to be included in issued permits. As discussed above, revised Section 122.132(e)(12) specifies that applications for units subject to CAM must contain elements specified in 40 CFR 64.3, Monitoring Design Criteria, and 40 CFR 64.4, Submittal Requirements. Revised Section 122.132(e)(13) requires that applications for all initial permit issuances, renewals, reopenings, and significant and minor permit revisions include periodic monitoring requirements. The TCEQ amended Section 122.142(c), which previously specified that periodic monitoring is only included as required by the Executive Director, and Section 122.142(h), which previously specified that permits include CAM as specified in Subchapter H. The amendments state that permits must contain periodic monitoring and CAM in accordance with the schedule in 40 CFR 64.5. These amendments will require permits to contain all requirements specified in 40 CFR 70.6. The TCEQ eliminated the monitoring GOP process by adopting the repeal of all Sections from Subchapters G and H that implemented monitoring through the GOP process. In addition to the previously mentioned periodic monitoring sections that were repealed, TCEQ repealed all of the CAM requirements contained in Subchapter H. The CAM applicability section and the section pertaining to quality improvement plans are adopted under Subchapter G, renamed Periodic Monitoring and Compliance Assurance Monitoring. The TCEQ also adopted several amendments to Chapter 122 to clarify periodic monitoring and CAM implementation and to delete any reference to the monitoring GOP process.

The TCEQ also amended the GOP definition at Section 122.10(11) to specify that multiple similar sources may be authorized to operate under a GOP, consistent with the requirement at 40 CFR 70.6(d) that general permits are limited to numerous similar sources. Section 122.501(a)(1) requires the Executive Director to issue GOPs with conditions that provide for compliance with all requirements of Chapter 122. The TCEQ also revised Section 122.161 to make related miscellaneous changes.

We are today proposing to approve the new and revised rules and the repeals as a revision to Texas' title V program and to find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

D. Statement of Basis Requirement

40 CFR 70.7(a)(5) requires that ''[t]he permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.'' The TCEQ regulations previously had no State regulation directly corresponding to 40 CFR 70.7(a)(5). To address the NOD, TCEQ adopted new Section 122.201(a)(4), which requires that all permits issued by the Executive Director must include a statement that sets forth the legal and factual basis for the conditions of the permit, including references to the applicable statutory or regulatory provisions. The Executive Director will send this statement to EPA and any person who requests it. The statement of basis is required for all initial issuances, revisions, renewals and reopenings of permits. We are today proposing to approve the new rule as a revision to Texas' title V program and to find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

E. Definition of Applicable Requirement

Texas' definition of ''applicable requirement'' in 30 TAC 122.10(2) previously did not include all the applicable provisions of its SIP that

implemented relevant requirements of the Act as required by 40 CFR 70.2. To address the NOD, TCEQ has amended its definition of ''applicable requirement'' in Section 122.10(2) to include citations to the relevant requirements of the Act which were identified in the NOD and others identified after issuance of that notice. The applicable requirement definition now includes Section 101.1, which relates to definitions; Section 101.3, which relates to circumvention; Sections 101.201, 101.211, 101.221, 101.222, and 101.223, which relate to emissions events and maintenance, startup, and shutdown (''MSS'') reporting requirements; Section 101.8 and Section 101.9, which relate to sampling and sampling ports, and Section 101.10, which relates to emissions inventory requirements.[1] We are today proposing to approve the revised rule as a revision to Texas' title V program and to find that upon final SIP approval the revisions will satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2001, NOD.

F. PTE Registration Requirements

Many stationary source requirements of the Act apply only to major sources, which are those sources whose emissions of air pollutants exceed threshold emissions levels specified in the Act. However, such sources may legally avoid program requirements by taking federally-enforceable permit conditions which limit emissions to levels below the applicable major source threshold. Those permit conditions, if violated, are subject to enforcement by EPA, the State or local agency, or by citizens. Federal enforceability ensures the conditions placed on emissions to limit a source's PTE are enforceable as both a legal and practical matter.

Texas' regulations previously allowed a facility to keep all documentation of its PTE limitation registrations on site without providing those documents to the State or to EPA; therefore, the PTE limitations were not practically enforceable. Also, the limitations were not federally enforceable because the Texas regulations at issue were not part of the Texas SIP. The TCEQ has revised Sections 106.6, 116.115, 116.611, and 122.122. These changes require registrations to be submitted to the Executive Director, to the appropriate Commission regional office, and all local air pollution control agencies, and a copy shall be maintained on-site of the facility. The TCEQ is also required to make the records available to the public upon request. The TCEQ also submitted these changes for approval as a SIP revision. We are proposing to approve the amended Sections 106.6, 116.115, 116.611, and 122.122 as revisions to the Texas SIP in a separate **Federal Register** notice. Upon final SIP approval, these changes will make the PTE limits in the certified registrations practically enforceable and federally enforceable. We are also today proposing to approve the revised rules in Section 122.122 as a revision to Texas' title V program and to find that upon final SIP approval the revisions will satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

IV. What Other Program Changes Are We Proposing To Approve?

The TCEQ also included in the December 9, 2002, submittal other regulatory revisions that strengthen Texas' program. Today's action also proposes approval of these revisions to the Texas title V Operating Permit Program submitted on December 9, 2002, which relate to credible evidence and concurrent review.

A. Credible Evidence

The TCEQ has revised its definition of ''deviation'' at 30 TAC 122.10(5) and 122.132(e)(4)(B) to require sources to consider ''any credible evidence or information'' to certify compliance. We are today proposing to approve this revision as consistent with part 70 and EPA's credible evidence rule, 62 FR 8314 (February 24, 1997).

B. Concurrent Review

The TCEQ has revised its regulations concerning EPA review of title V permits at Section 122.350(B)(1) to provide that EPA's review period may not run concurrently with the State public review period if any comments are submitted or if a public hearing is requested. We are today proposing to approve this revision as consistent with Section 505(b) of the Act and 40 CFR 70.8.

V. What Is Our Proposed Action?

We are proposing to approve revisions to Texas' regulations for periodic monitoring regulations, CAM regulations, periodic monitoring and CAM GOPs, statement of basis requirement, applicable requirement definition and PTE registration regulations as revisions to Texas' title V air Operating Permits Program. Elsewhere in today's **Federal Register**, we are proposing to approve related SIP revisions submitted to EPA on December 9, 2002. We are also proposing to approve revisions to the Texas title V Operating Permit Program submitted on December 9, 2002, which relate to credible evidence and concurrent review. The rule revisions submitted by Texas, as stated above, are in response to the NOD.

This proposed approval does not extend to ''Indian Country'', as defined in 18 U.S.C. 1151. In its Operating Permits Program submittal, Texas does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in Texas has authority to administer an independent title V program in the State. On February 12, 1998, EPA promulgated regulations under which Indian tribes could apply and be approved by EPA to implement a title V Operating Permits Program (40 CFR part 49).

For those Indian tribes that do not seek to conduct a title V Operating Permits Program, EPA has promulgated regulations (40 CFR part 71) governing the issuance of Federal operating permits in Indian country. 64 FR 8247, February 19, 1999.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget (OMB). Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond those required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

[1] The NOD identified the emissions event and MSS reporting requirements at 30 TAC Sections 101.6, 101.7, and 101.11 as SIP provisions that must be included in the definition of ''applicable requirements.'' Since then, TCEQ has revised those rules and recodified them at Sections 101.201, 101.211, 101.221, 101.222, and 101.223 and submitted the rules to EPA for approval as a SIP revision. The EPA is reviewing those rules and will address the SIP submission in a separate rulemaking prior to EPA's final approval of Texas' definition of applicable requirement.

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This proposed rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The action merely proposes to approve existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, *see* 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 *note,* requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing State Operating Permit Programs submitted pursuant to title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove such regulations for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the NTTAA do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 30, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–17338 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 03–128; FCC 03–125]

Nationwide Programmatic Agreement

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (''FCC'' or ''Commission'') seeks comment regarding a draft nationwide programmatic agreement that would tailor and streamline procedures for review of certain undertakings for communications facilities under the National Historic Preservation Act of 1966 (''NHPA''). In addition, the Commission seeks comment on certain transitional issues regarding the treatment of NHPA proceedings pending at the time the draft nationwide programmatic agreement is adopted.

DATES: Submit comments on or before August 8, 2003. Submit reply comments on or before September 8, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Frank Stilwell, Wireless Telecommunications Bureau, (202) 418–1892.

SUPPLEMENTARY INFORMATION: This is a summary of a *Notice of Proposed Rulemaking (NPRM)* in WT Dkt. No. 03–128, FCC 03–125, adopted May 27, 2003, and released June 9, 2003. The Nationwide Agreement, upon amendment and final agreement, will tailor and streamline procedures for review of certain Undertakings for communications facilities under section 106 of the National Historic Preservation Act of 1966 (''NHPA''), 16 U.S.C. 470 *et seq.* The *NPRM* also proposes to revise a related provision of the Commission's rules and initiate the use of two new FCC forms for Commission applicants, licensees and tower owners. The full text of the *NPRM* is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

Paperwork Reduction Act

This NPRM contains a new information collection as described in Section B of the Initial Regulatory Flexibility Analysis below. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, Office of Management and Budget (OMB), and other federal agencies to comment on the information collection(s) contained in the NPRM as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. It will be submitted to the OMB for review under Section 3507(d) of the PRA. Public, OMB, and other agency comments are due September 8, 2003. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information of the respondents, including the use of automated collection techniques or other forms of information technology.

A copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1C–804, 445 12th Street, SW., Washington, DC 20554, or via the Internet at *Judith-bherman@fcc.gov,* and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW.,

Washington, DC 20503 or via the Internet to *kim.johnson@omb.eop.gov.*

OMB Control Number: 3060-XXXX.

Title: Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.

Form: FCC Forms 620 and 621.

Type of Review: New collection.

Respondents: Business or other for-profit, Individuals or household, Not-for-profit institutions, and State, Local or Tribal Government.

Number of Respondents: 12,000.

Frequency of Response: Recordkeeping, On occasion reporting required, Third party disclosure.

Total Annual Burden: 73,800 hours.

Needs and Uses: This data is used by FCC staff, State Historic Preservation Officers (''SHPO''), Tribal Historic Preservation Officers (''THPO''), and the Advisory Council of Historic Preservation (''ACHP'') to take such action as may be necessary to ascertain whether a proposed action may affect historic properties that are listed or eligible for listing in the National Register as directed by section 106 of the NHPA and the Commission's Rules.

I. Background

1. In this *Notice of Proposed Rulemaking (''NPRM''),* we seek comment on a draft Nationwide Programmatic Agreement (''Nationwide Agreement'') among the Federal Communications Commission (''Commission''), the Advisory Council on Historic Preservation (''Council''), and the National Conference of State Historic Preservation Officers (''Conference'') that would tailor and streamline procedures for review of certain Undertakings for communications facilities under the National Historic Preservation Act of 1966 (''NHPA''), as well as a related revision of the Commission's rules. *See* 16 U.S.C. 470 *et seq.* An ''Undertaking'' subject to review under the NHPA is defined as ''a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including (A) those carried out by or on behalf of the agency; (B) those carried out with Federal financial assistance; (C) those requiring a Federal permit, license, or approval; and (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.'' 16 U.S.C. 470w(7). The proposed Nationwide Agreement would incorporate an existing Programmatic Agreement that excludes most collocations of antennas on existing structures from routine historic preservation review. *See* 16 FCC Rcd 5574 (Wireless Tel. Bur. 2001). In November 2001, representatives of the Commission, Council and Conference, American Indian tribes, the communications industry, and historic preservation consultants, as part of a working group sponsored by the Council, began drafting a proposed Nationwide Agreement. Consistent with § 800.14(b) of the Council's rules, 36 CFR 800.14(b), and § 1.1307(a)(4) of the Commission's rules, 47 CFR 1.1307(a)(4), the draft Nationwide Agreement is intended to tailor the section 106 review, 16 U.S.C. 470f, in the communications context so as to improve compliance and streamline the review process for construction of towers and other Commission Undertakings. The Commission's environmental rules currently treat construction of licensed communications facilities as ''Undertakings.'' An illustrative list of Commission activities in relation to which Undertakings covered by the draft Nationwide Agreement may occur is attached. *See* Attachment 2 to Attachment A. At the same time, the parties intend to advance and preserve the goal of the NHPA to protect historic properties, including historic properties to which Indian tribes and Native Hawaiian organizations (''NHOs'') attach religious and cultural significance.

II. Discussion

2. We request comment on the draft Nationwide Agreement. *See* Attachment A to this NPRM. In particular, we seek comment on several issues that members of the Working Group have specifically raised during the course of negotiating the current draft Nationwide Agreement. For example, members of the Working Group have proposed certain modifications to the language in the draft Nationwide Agreement regarding exclusion of certain Undertakings from routine section 106 review. *See* Draft Nationwide Agreement section III. These and other issues on which the members of the Working Group did not reach full consensus are indicated in footnotes throughout the draft Nationwide Agreement. We seek comment on these and any other issues related to the draft Nationwide Agreement, including issues related to the potential economic impact of the draft Nationwide Agreement on small entities.

3. We also request comment regarding how the draft Nationwide Agreement should be crafted consistent with the Commission's government-to-government relationship with and trust responsibility to federally recognized Indian tribes (including Alaska Native Villages), *See* In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, Policy Statement, 16 FCC Rcd 4078, 4080 (2000), and statutory and regulatory provisions governing the Commission's relationship with such Indian tribes and NHOs, See 16 U.S.C. 470a(d); 36 CFR 800.2(c)(2); 47 CFR 1.1308(b) Note (when an action interferes with or adversely affects an American Indian tribe's religious site, the Commission shall solicit the views of that American Indian tribe). Several issues in this regard have been brought to our attention both through tribal participation in the Working Group and through Commission staff consultation with the United South and Eastern Tribes, Inc. For instance, do the NHPA, the Council's rules or other governing principles require notification or more, prior to construction, to Indian tribes and NHOs with historic associations to the area in which an Undertaking is to occur, even though the parties to a Nationwide Agreement identify certain classes of Undertakings as unlikely to have an effect on historic properties and therefore excluded from routine review? *See* Draft Nationwide Agreement at section III.B Similarly, should the Nationwide Agreement prescribe procedures for licensees and applicants to invite the participation of Indian tribes and NHOs in the section 106 process, or should it recommend that, as an alternative to direct Commission consultation on each site, the parties implement alternative processes pursuant to guidance to be provided separately by the Commission after consultation with Indian tribes and NHOs? *Id.* section IV, Alternatives A and B. We seek comment on these issues.

4. In addition, we request comment regarding the treatment of section 106 reviews that are in process at the time a Nationwide Agreement becomes effective. For example, to what extent should the timelines, processes and standards in a Nationwide Agreement replace the Council's rules (36 CFR part 800) for section 106 reviews that are pending before a SHPO/THPO, or at other stages in the process, on the date that a Nationwide Agreement goes into effect? We seek comment on this and other transitional issues.

5. Finally, in conjunction with the proposed execution of the Nationwide Agreement, we propose to revise § 1.1307(a)(4) of our rules.[1] Under § 1.1307(a)(4), applicants are required to evaluate whether their proposed

[1] 47 CFR 1.1307(a)(4).

facilities may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places and, if so, to file an Environmental Assessment and obtain a Finding of No Significant Impact (or procure completion by the Commission of an Environmental Impact Statement) prior to construction.[2] The Note to § 1.1307(a)(4) provides guidance as to how applicants should perform this evaluation consistent with the NHPA. In order to make clear that the procedures in the Nationwide Agreement will be binding on applicants, and that non-compliance with these procedures would subject a party to potential enforcement action by the Commission, we propose to amend § 1.1307(a)(4) by removing the Note and adding the following language to the text of 47 CFR 1.1307(a)(4):

The National Register is updated in the **Federal Register**. To ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register of Historic Places, an applicant shall follow the procedures set forth in the rules of the Advisory Council on Historic Preservation, 36 CFR part 800, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Appendix B to Part 1 of this Chapter, and the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, Appendix C to Part 1 of this Chapter.

We seek comment on this proposed revision to our rules. The Nationwide Programmatic Agreement for the Collocation of Wireless Antennas may be found at 66 FR 17554, April 2, 2001.

III. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

6. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *Id.* §§ 1.1200–1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See Id.* § 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. *See Id.* § 1.1206(b). Under the Council's rules, the Council and Conference must be parties to the Nationwide Agreement. Therefore, for purposes of the Commission's *ex parte* rules, in this proceeding we shall treat presentations from these entities and their staffs as exempt presentations under 47 CFR 1.1204(a)(5).

B. Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''),[3] the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 7 of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[4] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[5]

C. Need for, and Objectives of, the NPRM

8. The *NPRM* seeks comment on a draft Nationwide Programmatic Agreement (''Nationwide Agreement'') among the Federal Communications Commission (''Commission''), the Advisory Council on Historic Preservation (''Council'') and the National Conference of State Historic Preservation Officers (''Conference''). The Nationwide Agreement would tailor and streamline procedures for review of certain Undertakings for communications facilities under the National Historic Preservation Act of 1966 (''NHPA'').[6] In November 2001, representatives of the Commission, Council, Conference, American Indian tribes, the communications industry, and historic preservation consultants, as part of a working group sponsored by the Council, began drafting a proposed Nationwide Agreement. Consistent with the Council's rules, the draft Nationwide Agreement is intended to tailor the section 106 review[7] in the communications context so as to improve compliance and streamline the review process for construction of towers and other Commission Undertakings.

9. The Commission proposes to adopt the Nationwide Agreement in order to clarify and streamline the obligations[8] of its regulatees[9] (''Applicants'') with respect to assisting the Commission in meeting its responsibilities under the NHPA. For example, the draft Nationwide Agreement would exclude from routine Section 106 review[10] certain Undertakings that are unlikely to affect historic properties.[11] For those Undertakings that would remain subject to review, the draft Nationwide Agreement would specify standards and procedures that Applicants shall follow when completing the section 106 review. For example, the Nationwide Agreement sets forth the manner in which Applicants should seek participation of Indian Tribes and Native Hawaiian Organizations; should seek tribal consultation; should seek public participation and consulting parties; should identify, evaluate, and assess effects on historic properties;

[2] *Id.; see also* 47 CFR 1.1308, 1.1311.

[3] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Public Law No. 104–121, Title II, 110 Stat. 857 (1996).

[4] *See* 5 U.S.C. 603(a).

[5] *See* 5 U.S.C. 603(a).

[6] *See* 16 U.S.C. 470 *et seq.*

[7] Section 106 of the NHPA, codified at 16 U.S.C. 470f, requires federal agencies to take into account the effects of certain of their undertakings on historic properties, listed or eligible for inclusion in the National Register of Historic Places, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertakings.

[8] *See* 47 CFR 1.1307(a)(4).

[9] Commission regulatees, in this instance, include licensees, tower owners, and applicants for authorization to construct facilities in the wireless, media, and satellite services.

[10] Commission Applicants are required to review whether a proposed tower or antenna may affect historic properties that are either listed or eligible for inclusion in the National Register, including properties that may affect sites of religious or cultural importance to Indian tribes or Native Hawaiian organizations. To do this, Applicants must begin the section 106 process by first presenting documentation of the review to the State Historic Preservation Officer and any relevant Tribal Historic Preservation Officers.

[11] An ''Undertaking'' subject to review under the NHPA is defined as ''a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including (A) those carried out by or on behalf of the agency; (B) those carried out with Federal financial assistance; (C) those requiring a Federal permit, license, or approval; and (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.'' 16 U.S.C. 470w(7). The Commission's environmental rules currently treat construction of licensed communications facilities as ''Undertakings.'' An illustrative list of Commission activities in relation to which Undertakings covered by the draft Nationwide Agreement may occur is provided here as Attachment 2 to Appendix A (''Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission'').

and, should submit materials for review by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Commission. In addition, the draft Nationwide Agreement includes provisions for emergency situations;[12] inadvertent or post-review discovery of adverse effects on historic properties; construction prior to completion of the section 106 process; public comments; and amendment or termination of the Agreement. Finally, the Nationwide Agreement proposes to prescribe two standardized forms for making submissions to the SHPO or THPO.

10. The Commission further proposes to amend § 1.1307(a)(4) in order to make clear that the procedures in the Nationwide Agreement will be binding on applicants, and that non-compliance with these procedures would subject a party to potential enforcement action by the Commission. Specifically, § 1.1307(a)(4) would be amended to specify that in order to ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register,[13] an Applicant shall follow the procedures set forth in the rules of the Council, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 66 FR 17554, April 2, 2001, and this Nationwide Agreement.

D. Legal Basis

11. We tentatively conclude that we have authority under sections 1, 4(i), 301, 303(q), 303(r), 309(a), 309(j), and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303(q), 303(r), 309(a), 309(j), and 319, section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, and § 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 CFR 800.14(b), to adopt the proposals set forth in the *NPRM.*

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by proposed rules.[14] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [15] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[16] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[17]

13. The draft Nationwide Agreement and *NPRM* could result in rule changes that, if adopted, would impose requirements on entities that may construct facilities that may significantly affect the environment under § 1.1307 of the Commission's rules. This includes various classes of Commission licensees as well as non-licensee tower owners. To assist the Commission in analyzing the total number of potentially affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from the *NPRM.*

Wireless Telecommunications

14. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Cellular and Other Wireless Telecommunications.'' [18] Under that SBA category, a business is small if it has 1,500 or fewer employees.[19] According to the Bureau of the Census, only twelve firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees.[20] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition.

15. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to ''Cellular and Other Wireless Telecommunication'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[21] According to the Bureau of the Census, only twelve firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees.[22] If this general ratio continues in 2003 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's small business standard.

16. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[23] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding

[12] The draft Nationwide Agreement outlines the manner in which applicants should complete section 106 reviews in those circumstances when emergency service is needed in a specific location.

[13] ''Listed'' properties are those properties for which an application for inclusion in the National Register of Historic Places (''National Register'') has been approved. Under § 800.16(l)(2) of the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.16(l)(2), the term ''eligible for inclusion in the National Register'' includes both properties formally determined as such by the Keeper of the National Register in accordance with applicable regulations of the Secretary of the Interior and all other properties that the meet the National Register criteria. Information on the characteristics of properties that meet these criteria is available at the National Register web site: *http://www.cr.nps.gov/nr.*

[14] 5 U.S.C. 604(a)(3).

[15] 5 U.S.C. 601(6).

[16] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[17] 15 U.S.C. 632.

[18] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

[19] *Id.*

[20] U.S. Department of Commerce, U.S. Census Bureau, 1997 Economic Census, Information—Subject Series, Establishment and Firm Size, Table 5—Employment Size of Firms Subject to Federal Income Tax at 64, NAICS code 517212 (October 2000).

[21] 13 CFR 121.201.

[22] U.S. Department of Commerce, U.S. Census Bureau, 1997 Economic Census, Information—Subject Series, Establishment and Firm Size, Table 5—Employment Size of Firms Subject to Federal Income Tax at 64, NAICS code 517212 (October 2000).

[23] Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, *Third Report and Order,* 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997) (*220 MHz Third Report and Order*).

three years.[24] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[25] The SBA has approved these small size standards.[26] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[27] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 683 were sold.[28] Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[29]

17. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[30] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[31] Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[32] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[33] Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[34]

18. *Lower 700 MHz Band Licenses.* We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[35] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[36] A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[37] Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings [EAGs]) commenced on August 27, 2002, and closed on September 18, 2002.[38] Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.

19. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order, authorizing service in the upper 700 MHz band.[39] No auction has been held yet.

20. *Private and Common Carrier Paging.* In the *Paging Second Report and Order,* we adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[40] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[41] The SBA has approved this definition.[42] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000.[43] Of the 985 licenses auctioned, 440 were sold. 57 companies claiming small business status won licenses. An auction of Metropolitan Economic Area (MEA) and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001.[44] Of the 15,514 licenses auctioned, 5,323 were sold. 132 companies claiming small business status purchased 3,724 licenses. At present, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[45] Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

21. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The

[24] *Id.* at paragraph 291.

[25] *Id.*

[26] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[27] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

[28] ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses after Final Payment is Made,'' *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

[29] ''Phase II 220 MHz Service Spectrum Auction Closes,'' *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

[30] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

[31] *Id.* at paragraphs 106–108.

[32] *Id.* at paragraphs 106–108.

[33] *See generally,* ''220 MHz Service Auction Closes: Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses,'' *Public Notice*, DA 98–2143 (rel. October 23, 1998).

[34] ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice*, 16 FCC 4590 (WTB 2001).

[35] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), GN Docket No. 01–74, *Report and Order*, 17 FCC Rcd 1022 (2002).

[36] *Id.* at paragraph 172.

[37] *Id.* at paragraph 172.

[38] *See* ''Lower 700 MHz Band Auction Closes,'' 17 FCC Rcd 17272 (2002).

[39] Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, *Second Memorandum Opinion and Order,* 16 FCC Rcd 1239 (2001).

[40] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Second Report and Order*, 12 FCC Rcd 2732, 2811–2812, paragraphs 178–181 (*Paging Second Report and Order*); *see also* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, paras. 98–107 (1999).

[41] *Paging Second Report and Order,* 12 FCC Rcd at 2811, paragraph 179.

[42] *See* Letter to Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[43] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice,* 14 FCC Rcd 605 (WTB 1998).

[44] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice,* 14 FCC Rcd 605 (WTB 1998).

[45] *See Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau , Table 5.3—Number of Telecommunications Service Providers that are Small Businesses (May 2002).

Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[46] For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[47] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[48] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[49] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks plus the 113 winning bidders in the re-auction, for a total of 296 small entity broadband PCS providers as defined by the SBA small business standards and the Commission's auction rules.

22. *Narrowband PCS.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less.[50] Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[51] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[52] The SBA has approved these small business size standards.[53] There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

23. *800 and 900 MHz Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b) (1), the Commission has established a small business size standard for purposes of auctioning SMR licenses in the 900 MHz band, the upper 200 channels of the 800 MHz band, and the lower 230 channels of the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years.[54] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.[55] Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

24. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed ''small business'' status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small business. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations on the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by SBA.

25. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The SBA has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—that is, an entity with no more than 1,500 persons.[56]

26. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994

[46] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, *Report and Order*, 11 FCC Rcd 7824, paragraphs 57–60 (1996); *see also* 47 CFR 24.720(b).

[47] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, paragraph 60 (1996).

[48] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Small Business Administration, dated December 2, 1998.

[49] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. January 14, 1997).

[50] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 15 FCC Rcd 10456, 10476, paragraph 40 (May 18, 2000).

[51] *Id.* at 15 FCC Rcd 10476, paragraph 40.

[52] *Id.* at 15 FCC Rcd 10476, paragraph 40.

[53] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Administrator, Small Business Administration (Dec. 2, 1998).

[54] 47 CFR 90.814(b)(1).

[55] *See* Letter to Tom Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

[56] 13 CFR 121.201.

Annual Report on PLMRs [57] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

27. *Fixed Microwave Services.* Microwave services include common carrier,[58] private-operational fixed,[59] and broadcast auxiliary radio services.[60] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—that is, an entity with no more than 1,500 persons.[61] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

28. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[62] There are a total of approximately 127,540 licensees within these services. Governmental entities [63] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[64]

29. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.[65] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

30. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.[66] The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

31. *39 GHz Service.* The Commission defined ''small entity'' for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[67] An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[68] These regulations defining ''small entity'' in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

32. *Multipoint Distribution Service.* MDS involves a variety of transmitters, which are used to relay programming to the home or office.[69] Hundreds of stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended.[70] For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $11 million or less).[71] We are unable to estimate the number of pre-auction MDS licensees that are small businesses. The Commission has defined ''small entity'' for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[72] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[73] The MDS

[57] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at paragraph 116.

[58] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's rules).

[59] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[60] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[61] 13 CFR 121.201.

[62] With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15 through 90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. *47 CFR 90.15* through 90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. *47 CFR 90.33* through 90.55.

[63] 47 CFR 1.1162.

[64] 5 U.S.C. 601(5).

[65] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001 through 22.1037.

[66] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[67] *See* In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, *Report and Order,* 12 FCC Rcd 18600 (1997).

[68] *Id.*

[69] For purposes of this item, MDS includes the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS). For the number of incumbents and auction winners who qualify, *see* In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, *Notice of Proposed Rule Making and Memorandum Opinion and Order*, FCC 03–56 (rel. April 2, 2003) (''*MDS/ITFS NPRM and MO&O*'').

[70] 47 U.S.C. 309(j).

[71] *See* 13 CFR 121.201.

[72] 47 CFR 1.2110(a)(1).

[73] *See* Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing

auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business, but only 42 remain small businesses.

33. *Local Multipoint Distribution Service*. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[74] An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[75] These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA.[76] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small business winning bidders. Based on this information, we conclude that the number of small LMDS licenses includes the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

34. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 557 were won by 178 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[77] In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[78] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[79] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses by these revised rules.

35. *24 GHz Service*. The rules that we adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. We believe that there are only two licensees in the 24 GHz band.

36. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million.[80] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million.[81] These definitions have been approved by the SBA.[82] An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We conclude that the number of LMS licensees affected by this NPRM includes these four entities. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

Media Services (Broadcast & Cable)

37. *Commercial Television Services*. The SBA defines a television broadcasting station that has no more than $12.0 million in annual receipts as a small business.[83] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[84] Included in this industry are commercial, religious, educational, and other television stations.[85] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[86]

38. There were 1,695 full-service television stations operating in the United States as of December 2001.[87] According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year.[88] Of this total, 734 firms had annual receipts of $9,999,999.00 or less and an additional 71 had receipts of $10 million to $24,999,999.00.[89] Thus, under this

Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589 (1995).

[74] *See* Local Multipoint Distribution Service, Second Report and Order, 62 FR 23148, April 29, 1997.

[75] *Id.*

[76] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

[77] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP WT Docket No. 93–253, Fourth Report and *Order, 59 FR 24947, May 13, 1994.*

[78] In the Matter of Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, *Report and Order and Memorandum Opinion and Order*, 64 FR 59656, November 3, 1999.

[79] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 64 FR 59656, November 3, 1999.

[80] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182 paragraph 20 (1998); see also 47 CFR 90.1103.

[81] *Id.*

[82] *See* Letter to Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Feb. 22, 1999).

[83] 13 CFR 121.201, North American Industry Classification System (NAICS) code 515120.

[84] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[85] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual*, at 13 CFR 121.201, North American Industry Classification System (NAICS) code 515120.

[86] 1992 Census, Series UC92–S–1, at Appendix A–9.

[87] FCC News Release, Broadcast Station Totals as of December 31, 2001 (released May 21, 2002).

[88] 13 CFR 121.201, North American Industry Classification System (NAICS) code 515120.

[89] *Id.* The census data do not provide a more precise estimate.

standard, the majority of firms can be considered small.

Commercial Radio Services

39. The SBA defines a radio broadcasting station that has no more than $6 million in annual receipts as a small business.[90] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[91] Included in this industry are commercial, religious, educational, and other radio stations.[92] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[93] According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year.[94] Of this total 4,265 had annual receipts of $4,999,999.00 or less, and an additional 103 firms had receipts of $5 million to $9,999,999.00.[95] Thus, under this standard, the great majority of firms can be considered small.

40. *Cable Systems.* The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[96] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995.[97] Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

41. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate less than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000.'' [98] The Commission has determined that there are 67,700,000 subscribers in the United States.[99] Therefore, we found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[100] Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450.[101] Since we do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

42. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations. The SBA defines a television broadcasting station that has no more than $12.0 million in annual receipts as a small business,[102] and it defines a radio broadcasting station that has no more than $6 million in annual receipts as a small business.[103]

43. The Commission estimates that there are approximately 3,600 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.

Satellite Services

44. The Commission has not developed a small business size standard applicable to licensees in the international services. However, the SBA has developed a size standard for a small business within the category of Other Telecommunications. Under that SBA size standard, such a business is small if it has $12.5 million or less in average annual receipts.[104] According to Census Bureau data for 1997, there were a total of 439 other communications services providers, operating for the entire year.[105] Of the 439, a total of 430 had annual receipts of less than $10.0 million. Consequently, the Commission estimates that most Other Telecommunications providers are small entities that may be affected by the rules and policies adopted herein.

45. *International Broadcast Stations.* Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition.

46. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

47. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary

[90] 13 CFR 121.201, North American Industry Classification System (NAICS) code 515112.

[91] 1992 Census, Series UC92–S–1, at Appendix A–9.

[92] *Id.*

[93] *Id.*

[94] 13 CFR 121.201, North American Industry Classification System (NAICS) code 515112.

[95] *Id.* The census data do not provide a more precise estimate.

[96] 47 CFR 67.901(3). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 6393 (1995). 13 CFR 121.201, North American Industry Classification System (NAICS) code 515210.

[97] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[98] 47 U.S.C. 543(m)(2).

[99] FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice DA 01–158 (January 24, 2001).

[100] 47 CFR 76.1403(b).

[101] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[102] 13 CFR 121.201, North American Industry Classification System (NAICS) code 515120.

[103] 13 CFR 121.201, North American Industry Classification System (NAICS) code 515112.

[104] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517410.

[105] *Id.*

basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

48. *Mobile Satellite Stations.* There are 21 licensees. On February 10, 2003, the Commission released a *Report and Order and Notice of Proposed Rulemaking* allowing licensees in the Mobile Satellite Services to use their spectrum for Ancillary Terrestrial Communications (ATC).[106] Licensees may construct towers to provide ATC service. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

49. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

50. *Digital Audio Radio Services (DARS).* Commission records show that there are 2 Digital Audio Radio Services authorizations. We do not request nor collect annual revenue information, and, therefore, we cannot estimate the number of small businesses under the SBA definition.

Non-Licensee Tower Owners

51. The Commission's rules require that any entity proposing to construct an antenna structure 200 feet or higher or within the glide slope of an airport must register the antenna structure with the Commission on FCC Form 854.[107] For this and other reasons, non-licensee tower owners may be subject to the requirements proposed in the NPRM and draft Nationwide Programmatic Agreement. As of April 2003, approximately 92,855 towers were included in the Antenna Structure Registration database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.[108] Moreover, the SBA has not developed a size standard for small businesses in the category ''Tower Owners.'' Therefore, we are unable to estimate the number of non-licensee tower owners that are small entities. We assume, however, that nearly all non-licensee tower companies are small businesses under the SBA's definition for cellular and other wireless telecommunications services.[109]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

52. Specific requirements that the draft Nationwide Agreement would impose on Applicants include, first, determining whether an exclusion applies to their proposed construction project, thereby obviating the need to submit Section 106 materials to the SHPO/THPO.[110] Applicants should maintain records to verify the applicability of any exclusion.[111] If alternative language proposed by the Navajo Nation is adopted, Applicants will also be required to provide notification of most excluded projects to potentially affected Indian tribes.[112] If no exclusion applies, the language discussed in the Telecommunications Working Group includes specific steps that Applicants shall follow to identify Indian tribes and Native Hawaiian Organizations (NHOs) that may attach religious and cultural significance to potentially affected historic properties. These steps offer those tribes and NHOs a full opportunity to participate in the process; to refer Indian tribes' requests for government-to-government consultation to the Commission; and to maintain confidentiality of private or sensitive information.[113]

53. The draft Nationwide Agreement also sets forth required procedures for seeking local government and public participation; considering public comments and forwarding them to the SHPO/THPO; and for identifying consulting parties.[114] In addition, the draft Nationwide Agreement sets forth standards for applicants to apply in defining the area of potential effects (APE); in identifying Historic Properties within the APE; in evaluating the historic significance of identified properties; and in assessing the effects of the Undertaking on Historic Properties.[115] Once identification, evaluation, and assessment are complete, the draft Nationwide Agreement requires Applicants to provide the SHPO/THPO and consulting parties with a Submission Packet including the appropriate form, which requires specified information about the Applicant, the project, and its review.[116] The draft Nationwide Agreement also sets forth procedures for Applicants to follow upon receiving certain responses from the SHPO/THPO. It also sets forth procedures for developing Memoranda of Agreement to mitigate adverse effects.[117] Finally, the draft Nationwide Agreement prescribes procedures for Applicants to follow in the event of inadvertent or post-review discoveries,[118] and sets forth potential measures that the Commission may require Applicants to take in response to a complaint alleging construction prior to compliance with section 106.[119]

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

54. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[120]

55. In general, the alternative of exempting small entities from the requirements proposed in the NPRM

[106] In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking,* FCC 03–15 (rel. Feb 10, 2003).

[107] 47 CFR 17.4.

[108] We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

[109] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212. Under this category, a business is small if it has 1,500 or fewer employees.

[110] Nationwide Agreement, section III.A.

[111] *Id.*

[112] *Id.,* section III.B.

[113] *Id.,* IV.D.—IV.H., IV.J, Alternative A. Alternative B, proposed by the United South and Eastern Tribes, Inc., encourages Indian tribes and NHOs to agree to protocols for relations between applicants and tribes or NHOs in lieu of direct government consultation, but does not specify such protocols.

[114] *Id.,* Part V.

[115] *Id.,* Part VI. To a substantial extent, these standards are taken directly from the Council's rules.

[116] *Id.,* section VII.A.1. and Attachments 3 and 4.

[117] *Id.,* sections VII.B.3, VII.C.2, VII.C.3, VII.C.6, and VII.D.

[118] *Id.,* Part IX.

[119] *Id.,* section X.C.

[120] 5 U.S.C. 603(c).

and draft Nationwide Agreement was rejected. The NHPA requires that all Federal Undertakings be evaluated for their potential effects on districts, sites, buildings, structures or objects, which are significant in American history, architecture, archeology, engineering or culture, and which are listed, or are eligible for listing, in the National Register of Historic Places. Neither the NHPA nor the Council's rules contemplates any exemption from review depending on the size or resources of the non-federal entity which initiates the undertaking. The impact of the requirements proposed in the draft Nationwide Agreement will be the same on all entities whether large or small. All of these projected reporting, record keeping, and other compliance requirements will be imposed in the same way, on all entities to be affected. Therefore, no special or undue burden will be placed on small entities.

56. However, because of our concern with minimizing burden on small entities, and as an alternative to stricter and potentially more burdensome regulation, several provisions of the draft Nationwide Agreement are expected to reduce economic burdens on small entities. For example, the exclusions from routine Section 106 review listed in Part III of the draft Nationwide Agreement will relieve Applicants, whether large or small, from the burden of performing unnecessary review for projects that are unlikely to affect historic properties. The standards set forth in Part VI will add predictability to the process, and the procedures and the time frames for review in Part VII will reduce costly uncertainty and delay. In addition, the prescribed forms will facilitate preparation of a sufficient submission packet on the first effort, thereby avoiding the need for costly and time-consuming resubmissions, which may be especially burdensome for small entities.

57. We note that Applicants routinely retain consultants to perform most of the steps associated with section 106 reviews. We anticipate that the use of consultants to perform these tasks would continue to be prevalent under the Nationwide Agreement. Applicants will typically comply with the standards and procedures set forth in the draft Nationwide Agreement by using consultants to perform specialized tasks due to their relative cost effectiveness and efficiency in completing section 106 reviews. We believe that the rules proposed for adoption herein will in no way serve to impose any requirements on small entities that would make the use of consultants more burdensome than would normally be the case.

58. The draft Nationwide Agreement may impose specific burdens on small entities in some instances. However, we believe these burdens are the minimum necessary to accomplish the draft Nationwide Agreement's purpose. Thus, the Commission, after discussion with the members of the Working Group, believes that the forms include the minimum information necessary for appropriate review by a SHPO, THPO, or the Commission. Similarly, the provisions for tribal and public participation (Parts IV and V) are intended to embody the least burdensome procedures on applicants that will afford these parties a complete and legally sufficient opportunity to participate in the process.[121] The submission and review processes set forth in Part VII have also been developed with the goal of reducing burdens insofar as possible.

59. The *NPRM* seeks comment on the draft Nationwide Agreement generally, including issues related to its potential economic impact on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

60. None. The draft Nationwide Agreement would modify and supplement the procedures set forth in the rules of the Council,[122] as expressly contemplated in those rules.[123]

G. Comment Dates

61. Pursuant to § 1.415 and § 1.419 of the Commission's rules, *See Id.* 1.415, 1.419, interested parties may file comments on or before August 8, 2003, and may file reply comments on or before September 8, 2003. All filings should refer to Docket No. 03–128. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket numbers, which in this instance is Docket No. 03–128. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Or you may obtain a copy of the SCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

62. Parties who choose to file by paper must file an original and six copies of each, and are hereby notified that effective December 18, 2001, the Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

63. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. In addition, this is a reminder that, effective October 18, 2001, the Commission discontinued receiving hand-delivered or messenger-delivered filings for the Secretary at its headquarters location at 445 12th Street, SW., Washington, DC 20554.

64. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission at 445 12th Street, SW., Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

[121] We point out that the *NPRM* seeks comment on two alternative sets of provisions for tribal participation and consultation that reflect different views of what is required in this regard.

[122] 36 CFR part 800.

[123] 36 CFR 800.14(b).

If you are sending this type of document or using this delivery method . . .	It should be addressed for delivery to . . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).
United States Postal service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554.

65. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the filing window at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket numbers, in this case, Docket No. 03–128), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554.

66. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554 (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at *qualexint@aol.com.* Commission staff will forward copies of all comments received to the Council and the Conference.

67. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.48 and all other applicable sections of the Commission's rules. *See* 47 CFR 1.48. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage that parties track the organization set forth in the NPRM in order to facilitate our internal review process.

68. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554 (telephone 202–863–2893, facsimile 202–863–2898) or via e-mail *qualexint@aol.com.* Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov.*

IV. Ordering Clauses

69. It is ordered, pursuant to sections 1, 4(i), 303(q), 303(r), 309(a), 309(j) and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(q), 303(r), 309(a), 309(j) and 319, section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, and § 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 CFR 800.14(b), that this Notice of Proposed Rulemaking is hereby adopted.

70. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. The Wireless Telecommunications Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for 47 CFR part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.1307 is amended by revising paragraph (a)(4) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(a) * * *

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places. (*See* 16 U.S.C. 470w(5); 36 CFR parts 60 and 800.) The National Register is updated in the **Federal Register**. To ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register of Historic Places, an applicant shall follow the procedures set forth in the rules of the Advisory Council on Historic Preservation, 36 CFR part 800, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Appendix B to part 1 of this chapter, and the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, Appendix C to part 1 of this chapter.[1]

* * * * *

[FR Doc. 03–17415 Filed 7–8–03; 8:45 am]

BILLING CODE 6712–01–P

[1] The FCC intends to add Appendices B and C to part 1 when this proposed rule is finalized.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030630163–3163–01, I.D. 052303F]

RIN 0648–AR15

Authorization for Commercial Fisheries under the Marine Mammal Protection Act of 1972; Zero Mortality Rate Goal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments

SUMMARY: NMFS is considering options for defining the Zero Mortality Rate Goal (ZMRG), which is the requirement for commercial fisheries to reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate, as identified in the Marine Mammal Protection Act (MMPA). To evaluate progress toward this goal, NMFS is promulgating regulations to identify what levels of incidental mortality and serious injury would satisfy the goal of insignificant levels approaching a zero rate. Options for such mortality and serious injury levels are described, and NMFS solicits public comments on these options and on other aspects of the ZMRG.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Send comments to Chief, Marine Mammal Conservation Division, Attn: ZMRG, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be faxed to 301–713–0376.

FOR FURTHER INFORMATION CONTACT: Thomas Eagle, Office of Protected Resources, 301–713–2322, ext. 105, *Tom.Eagle@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 118(b) of the MMPA (16 U.S.C. 1387(b)), which was enacted as part of the MMPA Amendments of 1994 (Pub. L. 103–238, 108 Stat. 532), is entitled ''Zero Mortality Rate Goal'' and requires commercial fisheries to ''reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate'' by April 30, 2001. The MMPA also requires the Secretary of Commerce (whose responsibilities under the MMPA have been delegated to NMFS) to review the progress of commercial fisheries toward this goal and to report to Congress on the results of this review by April 30, 1998. If, after the review, NMFS determines that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is above insignificant levels approaching a zero mortality and serious injury rate, NMFS must take appropriate action under section 118(f) of the MMPA. The report and regulations have not yet been completed.

Section 118(f) establishes take reduction plans as the mechanism NMFS must use to reduce the taking of marine mammals incidental to commercial fishing. NMFS is directed to develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a Category I (frequent incidental mortality or serious injury of marine mammals) or II (occasional incidental mortality and serious injury of marine mammals) fishery and may develop and implement a plan for any other marine mammal stock that interacts with a Category I fishery, which NMFS determines has a high level of mortality and serious injury across a number of such marine mammal stocks. A strategic stock of marine mammals is a marine mammal stock that is listed as threatened or endangered under the Endangered Species Act (16 U.S.C. 1531, *et seq.*), designated as depleted under the MMPA, or for which human-caused mortality exceeds the stock's Potential Biological Removal level (PBR). PBR is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. PBR is calculated as the product of the minimum population estimate of the affected stock (Nmin); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (Rmax); and a recovery factor (RF) between 0.1 and 1.0 (the definition is expressed in the following simple equation: PBR = Nmin*0.5Rmax*RF, see MMPA section 3(20); 16 U.S.C. 1362(20)).

Section 118(f)(2) of the MMPA includes two goals of a take reduction plan. The immediate goal of a take reduction plan is to reduce, within 6 months of implementation, the incidental mortality and serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal (PBR) level of all affected marine mammal population stocks. The long-term goal of a take reduction plan is to reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 5 years of implementation, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. Section 118(f)(3) establishes priorities for developing and implementing take reduction plans if funds are insufficient to develop and implement plans for all stocks that interact with Category I or II fisheries.

When viewed in its entirety, there are several parts of MMPA section 118 related to the ZMRG. First, the MMPA identifies a target level of mortality and serious injury (insignificant levels of mortality and serious injury approaching a zero mortality and serious injury rate) and a date by which commercial fisheries should reach that target (section 118(b)(1)). Second, the MMPA requires NMFS to complete a review of fisheries' progress toward the ZRMG and to report the results of this review to Congress. The report must also identify any fishery for which additional information is necessary to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery. Third, there is a mechanism (take reduction plans) to reduce incidental mortality and serious injury rates to the target levels (section 118(b)(4), (f)(1) and (2)), which includes specific considerations (available technology, economic feasibility, and existing fishery management plans) that must be taken into account in achieving the long-term goal (section 118(f)(2)). Furthermore, in section 118(f)(3), which identifies priorities for the development and implementation of take reduction plans, Congress recognized that there may not be adequate funding to convene all the necessary take reduction teams at once.

In August 2002, several organizations filed suit against NMFS alleging that NMFS failed to meet requirements of MMPA section 118. These organizations and NMFS negotiated a settlement agreement that requires, among other things, for NMFS to define the ZMRG through regulation and to submit the report to Congress as required by section 118(b)(3). The court approved a settlement agreement under which NMFS would submit this advance notice of proposed rulemaking to the **Federal Register** by the end of June 2003 and complete the regulations and

the report to Congress by the end of June 2004.

History of the ZMRG

When the MMPA was enzcted in 1972, the ZMRG was directed solely at the yellowfin tuna purse seine fishery in the Eastern Tropical Pacific Ocean (ETP), where participants in the fishery deliberately encircled dolphins to catch tuna. Hundreds of thousands of dolphins were being killed each year in the course of this fishing practice. Since 1972, Congress addressed the ZMRG several times from 1972 to 1997, and a brief history of Congressional action and guidance related to ZMRG is presented below.

The MMPA of 1972 (Public Law No. 92–522, 86 Stat. 1027)

Congress developed the legislative guidance for protecting marine mammals and defining the ZMRG in response to unsustainable mortality levels. The House committee noted that it was not their intent to shut down or significantly curtail the activities of the tuna fleet so long as the Secretary of Commerce ''is satisfied that the tuna fishermen are using the best available technology to assure minimal hazards to marine mammal populations'' (H.R. Rep No. 92–707, at 24 (1971)). The Senate added that regulations should be imposed ''as soon as practicable to minimize marine mammal fatalities through the use of currently available technology...'' (S. Rep. No. 92–863, at 6 (1972)). The Senate report included guidance that, ''while it should be the goal of Congress and the Executive eventually to eliminate totally the killing of porpoises, present technology is not adequate to the task.'' House and Senate Conferees agreed on a provision in MMPA section 101(a)(2), 16 U.S.C. 1371(a)(2), as follows: ''In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.'' (H. R. Conf. Rep. No. 92–1488, at 5 (1972)). In the Joint Explanatory Statement the report provided, ''...the objective of regulation would be to approach as closely as is feasible the goal of zero mortality and injury to marine mammals...It may never be possible to achieve this goal, human fallibility being what it is, but the objective remains clear.'' (H. R. Conf. Rep. No. 92–1488 at 23)

In its original form, the ZMRG was directed at the ETP tuna fishery but was sufficiently broad that it could include other fisheries in waters under U.S. jurisdiction. The ZMRG guided NMFS to regulate the tuna fleet to minimize incidental mortality immediately to the extent that the current technology would allow; however, neither NMFS nor the industry could be satisfied with that effort and should continue to strive to eliminate incidental mortality of marine mammals in the fishery. In the regulation of the tuna fleet, however, NMFS could not significantly curtail fishing activities if fishers were using the best available technology. Thus, the original ZMRG contained the following elements: immediate reduction of incidental mortality to the extent that current technology would allow, economic consideration of regulating fishing operations, and the long-term necessity to continue technological improvement for applying to future fishing operations.

MMPA Amendments of 1981 (Public Law No. 97–58, 95 Stat. 979)

In developing the amendments to the MMPA in 1981, the House committee noted successes of the MMPA, including, ''In the area of reducing the incidental take of porpoises in tuna fishing operations, for example, the number of porpoises killed has dropped from an estimated 368,000 animals in 1972 to an estimated 15,303 porpoises in 1980.'' (H. R. Rep. No. 97–228 at 11 (1981)). The report explained that an amendment to MMPA section 101(a)(2) was being made to clarify that ZMRG ''is satisfied in the case of the purse seine fishery for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable.'' (H. R. Rep. No. 97–228 at 17) The ''best techniques'' approach was reaffirmed in 1984 when Congress reauthorized the MMPA (H. R. Rep. No. 98–758 at 8 (1984)).

The House committee declined, however, to modify ZMRG for other commercial fisheries. The committee recognized that other fisheries (citing the foreign high seas salmon gillnet fishery as an example) had not developed new techniques and equipment for reducing incidental mortality. Therefore, the goal in MMPA section 101(a)(2) would remain unchanged for other commercial fisheries ''to stimulate new technology for reducing the incidental taking of marine mammals.'' (H. R Rep. No. 97–228 at 17–18 (1981)).

MMPA Amendments of 1988 (Public Law No. 100–711, 102 Stat. 4755)

In the Interim Exemption for Commercial Fisheries under MMPA section 114, 16 U.S.C. 1383a, Congress retained the ZMRG as an objective of a regime to govern interactions between marine mammals and commercial fishing operations other than the commercial yellowfin tuna fishery (H. R. Rep. No. 100–970 at 21 (1988), S. Rep. No. 100–592 at 16 (1988)). The 1988 Amendments also required the Marine Mammal Commission to recommend guidelines to govern the incidental taking of marine mammals in the course of fishing operations after the interim exemption expired. The Commission's guidelines (Recommended Guidelines to Govern the Incidental Taking of Marine Mammals in the Course of Commercial Fishing Operations After October 1993, July 1990) maintained the ZMRG as an important component of the MMPA, but did not present additional insight into the meaning of insignificant levels approaching a zero mortality and serious injury rate. The Commission's guidelines provided a quantitative approach for evaluating whether or not marine mammal mortality was having a negligible effect on the affected population and included an impact whose effect lasted for less than one year or one that would cause less than a 10 percent increase in time it would take a depleted stock to reach its maximum net productivity level. The first of these two criteria may be appropriate for a one-time activity; however, commercial fishing is repeated annually, and some level of incidental mortality is likely to continue after one year. The second criterion, no more than a 10 percent delay in recovery of a depleted stock, addresses the annual level of incidental mortality and serious injury to assess the effects of continuing fishery interactions with marine mammals. However, this approach applies to the recovery of depleted stocks, and not all stocks are depleted. Consequently, this criterion would not necessarily be applicable to all stocks, and an additional criterion would have to apply to those cases.

International Dolphin Conservation Act of 1992 (Public Law No. 102–523, 106 Stat. 3425)

Congress passed the International Dolphin Conservation Act of 1992, which, among other things, prohibited U.S. vessels from setting nets on or to encircle dolphins to catch tuna and limited dolphin mortality from U.S. vessels to specific numbers for specific periods. In doing so, Congress reversed its course for reducing dolphin mortality in the ETP and, thus, cast some question on legislative intent regarding the ability of the ''best

available technology'' standard to meet the ZMRG.

MMPA Amendments of 1994 (Public Law No. 103–238, 108 Stat. 532)

The legislative history for the MMPA amendments of 1994, which enacted MMPA section 118, reiterates the statutory language for ZMRG and does not expand on what it means (See H. R. Rep. No. 103–439, at 37 (1994); S. Rep. No. 103–220 at 16 (1994)). Importantly, these amendments included a specific date (7 years following enactment or April 30, 2001) by which commercial fisheries had to reduce incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate.

The International Dolphin Conservation Program Act of 1997 (Public Law No. 105–42, 111 Stat. 1122)

Congress amended the MMPA again in 1997 to establish a new dolphin conservation program for the tuna fishery. The House Committee on Resources noted that, ≥while current law focuses on techniques of reducing dolphin bycatch, the alternative fishing practices exacerbate fishing pressure on other sensitive marine populations.≥ (H. R. Rep. No. 105–74, Part I at 15 (1997))

This set of amendments to the MMPA did not specifically mention ''insignificant levels approaching a zero mortality and serious injury rate''. It did, however, authorize entering into a binding international agreement to establish a total dolphin mortality limit of 5,000 with an objective of progressively reducing dolphin mortality to a level approaching zero by setting annual limits (see MMPA section 302(1)). Furthermore, the 1997 amendments established stock-specific annual mortality limits (starting in 2001) of less than or equal to 0.1 percent of the minimum population estimate of the stock (section 302(3)). This stock-specific mortality limit is the mathematical equivalent of 10 percent of PBR for a cetacean stock of unknown or depleted status when using the default values for net productivity and the recovery factor.

The 1997 amendments required that all sets on dolphins must cease for the applicable fishing year if a mortality limit is exceeded and required the establishment of a per vessel annual mortality limit (MMPA section 302(4) and (7)); thus, high levels of mortality by a single vessel would not affect operations of other vessels that are not taking too many dolphins. Furthermore, the goal of eliminating dolphin mortality beyond the insignificant levels must be accomplished through a system of incentives rather than regulation of fishing activity (MMPA Section 302(8)). As a result of these changes, the MMPA now includes a regulatory framework for reducing mortality to levels below dolphin mortality limits (which may be interpreted to be ''insignificant levels'') and includes further reductions to meet the ultimate goal of eliminating dolphin mortality to be accomplished through incentives.

Although the 1997 amendments made no explicit reference to the ZMRG, at least one constituent group noted the relationship between stock-specific mortality limits and the long-term goal of reducing incidental mortality and serious injury to a zero rate. In their written statement during hearings on the 1997 amendments, the Center for Marine Conservation (now known as the Ocean Conservancy) stated, ''While any human-caused dolphin mortality is undesirable and recognizing that our objective is to eliminate dolphin mortality, the great majority of independent and government marine mammal scientists consider mortality levels of less that 0.1 percent to have a ''negligible impact'' on the dolphin stocks and to meet the MMPA's zero mortality rate goal.'' (Transcript of the ''Hearing Before the Subcommittee on Oceans and Fisheries of the Committee on Commerce, Science and Transportation, United States Senate, One Hundred Fifth Congress, First Session, May 14, 1997).

ZMRG Concepts in Use

On June 16, 1995 (60 FR 31666), NMFS proposed regulations to implement provisions of MMPA section 118. In that proposed rule, NMFS stated that a fishery could have satisfied the requirements of ZMRG in two ways. First, mortality and serious injury of marine mammals incidental to that fishery, in combination with all other fisheries, was no more than 10 percent of PBR of the affected stocks of marine mammals. Second, in those cases where total fishery mortality was above 10 percent of PBR for one or more stocks of marine mammals, a single fishery was responsible for the removal of one percent or less of the PBR of any stock of marine mammals. The definition of the ZMRG in the proposed rule was related to proposed regulations for classifying fisheries so that only those fisheries that had achieved insignificant levels of incidental mortality and serious injury would be in Category III. NMFS related ZMRG and fishery classification in this manner because take reduction plans are the mechanism to reduce incidental mortality and serious injury to insignificant levels, and Category III fisheries are not subject to take reduction plans.

When NMFS published its final rule (60 FR 45086, August 30, 1995) implementing MMPA section 118, these provisions related to the ZMRG were omitted. NMFS noted in the final rule only that the definition of ZMRG had been removed because the agency was still considering what would be an appropriate goal.

The proposed rule using 10 percent of PBR was based upon preliminary simulation models investigating a level of mortality and serious injury that would not delay recovery of a depleted stock by more than 10 percent of the time it would take to recover if the incidental mortality were not occurring. NMFS used these preliminary models as the scientific background for its description of fisheries in stock assessment reports as to whether the level of incidental mortality and serious injury rate of the affected stock of marine mammals ''is insignificant and is approaching a zero mortality and serious injury rate.'' (MMPA section 117(a)(4)(D); 16 U.S.C. 1386(a)(4)(D))

Subsequent, more complete, simulation modeling revealed that annual mortality of 10 percent of a stock's PBR or less would, indeed, not delay the stock's recovery by more than 10 percent; however, for some stocks, particularly those endangered species with a recovery factor of 0.1, a higher level of mortality would not delay recovery by more than 10 percent. Thus, it appeared that the use of 10 percent of PBR in a final rule could result in over-regulation of some fisheries.

Although it was not used in a regulatory program, NMFS continues to use a value of 10 percent of a stock's PBR as a criterion in the stock assessment reports to evaluate whether incidental mortality is at insignificant levels approaching a zero mortality and serious injury rate and will continue to do so until a final rule defining the threshold for insignificant levels of mortality and serious injury is completed. The stock assessment reports have no regulatory role; therefore, a conservative value of ''insignificant levels'' within these reports has no adverse impact on fisheries.

Application of ZMRG to Reducing Bycatch in Commercial Fisheries

To evaluate whether or not commercial fisheries have attained the ZMRG, NMFS must consider at least two questions related to MMPA section 118(b) and (f). First, what is the level of mortality and serious injury for each stock of marine mammals that could be

considered an insignificance threshold (T_{ins}), below which incidental mortality and serious injury can be considered insignificant? Second, if a fishery or group of fisheries has a level of mortality greater than this T_{ins} and available technologies would not allow further reductions within the feasible economics of that fishery, could NMFS determine that these fisheries had met the ZMRG?

Insignificance Threshold

NMFS is considering three options to estimate T_{ins} for each stock of marine mammals. When incidental mortality and serious injury is below Tins for a stock of marine mammals, then that level of mortality and serious injury would be insignificant to the affected stock. Table 1 summarizes each option and identifies arguments for and against each option. For each option, Table 1 also summarizes the number of fisheries that would have mortality and serious injury above the T_{ins} for one or more stocks of marine mammals, and it summarizes the number of marine mammal stocks for which the T_{ins} would be exceeded by mortality and serious injury incidental to commercial fisheries.

Each option is a mathematical equation that may not be applicable to every stock of marine mammals. These equations may use default or assumed values for population growth rates, and these values may not reflect the actual growth rates for the stock. Therefore, NMFS would evaluate the T_{ins} for each stock of marine mammals and adjust them as necessary to account for case-specific situations, such as declining or very small populations.

Available Technology and Economic Feasibility

NMFS must also consider options for applying the available technology and economic feasibility considerations required by section 118(f)(2) of the MMPA for reducing incidental take to insignificant levels of mortality and serious injury approaching a zero mortality and serious injury rate. A first option would be to accept the statement in MMPA section 118(b)(1) that fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate. Using this approach, available technology and economic feasibility would not be considered in evaluating whether or not a fishery had achieved the ZRMG. However, available technology and economic feasibility would have to be considered in developing and implementing a take reduction plan to reduce incidental mortality and serious injury toward insignificant levels approaching a zero mortality and serious injury rate.

A second option would be to incorporate available technology and economic feasibility into an initial assessment of whether or not fisheries had achieved the ZMRG by the statutory due date. If incidental mortality and serious injury by a commercial fishery was less than the PBR of all marine mammals but exceeded T_{ins} of one or more stocks on April 30, 2001, and existing technology would not allow further reductions of incidental mortality and serious injury in an economically feasible manner, then that fishery would have complied with the deadline specified in the MMPA. If, however, existing technology would allow further reduction in mortality within the constraints of economic feasibility, then that fishery would have to apply the appropriate technology to satisfy the ZMRG. This option would also allow for future development of technologies to continue to reduce incidental mortality and serious injury to insignificant levels approaching zero, and a fishery with incidental mortality above T_{ins} would have to incorporate newly developed technologies if such incorporation was economically feasible.

Comments Solicited

In the discussion above, NMFS has described a range of options for various aspects of the implementation of the ZMRG. NMFS solicits public comments about any of these options or suggestions of other options for consideration in a proposed rule. NMFS also solicits information from the public that would support the choice among options for implementing the ZMRG.

TABLE 1.—OPTIONS FOR THE INSIGNIFICANCE THRESHOLD

Option	Option 1 10 percent of PBR	Option 2 10 percent Delay in Recovery	Option 3 0.1 percent Nmin[1] (cetaceans); 0.3 percent Nmin (pinnipeds)
Definition	Mortality and serious injury is less than 10 percent of the PBR level.	Mortality and serious injury would not cause more than a 10 percent delay in recovery..	Mortality and serious injury is less than 0.1 percent of the minimum population estimate of a stock of cetaceans and 0.3 percent of a stock of pinnipeds
	.....	Mortality and serious injury is less than 0.2 percent of the minimum population estimate of a stock for cetaceans and 0.6 percent for pinnipeds[2].	Mortality and serious injury would not cause more than a 5 percent delay in recovery
	.....	Would maintain populations at or above 90 percent of the carrying capacity.	Would maintain populations at or above 95 percent of the carrying capacity
Pros	Familiar to NMFS' constituents because this definition was proposed in the 1995 proposed rule implementing section 118 of the MMPA (60 FR 31666, June 16, 1995).	Easy to calculate because it is equivalent to the PBR equation using a recovery factor of 0.1 for all stocks.	Easy to calculate because it is equivalent to the PBR equation using a recovery factor of 0.05 for all stocks
	Easy to calculate and explain because it is based on the well understood PBR equation.	Can be calculated through modeling to take other population parameters into account (e.g., severely declining stock).	Can be calculated through modeling to take other population parameters into account (e.g., severely declining stock)

TABLE 1.—OPTIONS FOR THE INSIGNIFICANCE THRESHOLD—Continued

Option	Option 1 10 percent of PBR	Option 2 10 percent Delay in Recovery	Option 3 0.1 percent Nmin[1] (cetaceans); 0.3 percent Nmin (pinnipeds)
	Consistent with current definition for Category III fishery, such that the List of Fisheries would provide an easy metric for which fisheries have met T_{ins}.	Consistent with the Marine Mammal Commission's recommendation for determining ''negligible impact'' related to the take of threatened or endangered marine mammals[3].	Consistent with ETP dolphin standard for T_{ins}, which is an ''insignificant'' metric specifically defined by Congress
	.....	Consistent application across all stocks because the recovery factor is set as the same number for all stocks..	Consistent application across all stocks because the recovery factor is set as the same number for all stocks
	.....	.....	T_{ins} is always less than PBR level
	.....	.....	Would allow for flexibility in relationship between T_{ins} and negligible impact under 101(a)(5)(E), such that negligible impact could be greater or less than T_{ins} depending on population parameters circumstances
Cons	May lead to overly conservative levels of protection for certain endangered species, whose PBR levels are already set at biologically insignificant levels.	For endangered species, T_{ins} = PBR level, which may be perceived as providing less protection for endangered stocks than for other stocks, even though the PBR for endangered stocks is already set at biologically insignificant levels.	May be perceived as providing less protection for endangered stocks than for other stocks, even though it reduces the PBR for endangered species (already insignificant due to the use of a recovery factor or 0.1) by 50 percent
	.....	Not consistent with the definition of a Category III fishery, such that the definition of a Category III fishery on the List of Fisheries would need to be changed to provide an easy metric for which fisheries have met T_{ins}.	May be too restrictive for stocks at their optimum sustainable population level by setting the T_{ins} for such stocks at 5 percent of their PBR level.
	.....	Does not allow for flexibility in the relationship between T_{ins} and section 101(a)(5)(E) of the MMPA, such that other population parameters could not be taken into account in making a negligible impact determination, potentially making it illegal for certain fisheries to operate.	

NUMBER OF CATEGORY I AND II FISHERIES INTERACTING WITH ONE OR MORE STOCKS OF MARINE MAMMALS FOR WHICH INCIDENTAL MORTALITY EXCEEDS T_{ins}

Atlantic	18	18	18
Pacific	8	8	8
Alaska	13	3	6

NUMBER OF MARINE MAMMAL STOCKS FOR WHICH INCIDENTAL MORTALITY EXCEEDS T_{ins}

Atlantic	15	13	14
Pacific	11	8	10
Alaska	6	2	4

1. Nmin is an abbreviation for the minimum estimated abundance for a population stock of marine mammals.

2. The calculations for estimating the delay in recovery were based upon the PBR equation and NMFS's default values for one-half of the maximum net productivity rate (Rmax). For pinnipeds the default value for one-half of Rmax is 6 percent, and for cetaceans, the default value is 2 percent.

3. Marine Mammal Commission, Recommended Guidelines to Govern the Incidental taking of marine mammals in the Course of Commercial Fishing Operations after October 1993, July 1990, at 30.

Dated: July 1, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–17240 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 062703B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that an application to issue EFPs for up to 100 commercial lobster vessels, submitted by the Maine Department of Marine Resources (MEDMR), contains all the information required by the regulations governing exempted experimental fishing under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and, therefore, warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under these EFPs would be consistent with the goals and objectives of the American lobster (lobster) fishery under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) and is

within the scope of earlier analyses of the impacts. However, further review and consultation may be necessary before a final determination is made to issue 100 EFPs. Therefore, NMFS announces that the Regional Administrator has made a preliminary decision to issue EFPs that would allow up to 100 current federally permitted lobster and/or Maine state lobster/crab license-holders to conduct fishing operations otherwise restricted by the regulations governing the lobster fishery.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this notification must be received on or before July 24, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on MEDMR Jonah crab EFP Proposal.'' Comments may also be sent via facsimile to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Draft 2003 Amendment to the Environmental Assessment (EA) prepared for the 2003/2004 Experimental Jonah Crab Fishery in Exclusive Economic Zone (EEZ) Nearshore Lobster Management Area 1, as well as the May 2002 environmental assessment that it amends are available from the Northeast Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Policy Analyst, 978–281–9244.

SUPPLEMENTARY INFORMATION: NMFS announces that the Regional Administrator intends to issue EFPs to allow up to 100 commercial lobster vessels to use up to 200 modified lobster traps per vessel to target Jonah crabs (*Cancer borealis*) within the EEZ portion of Nearshore Lobster Management Area 1 (NLMA1). The EFPs would facilitate the collection of data on modified lobster trap designs (side-entry and top-entry) to establish acceptable lobster bycatch thresholds and allow for the development of an exempted, species-specific Jonah crab trap. Specifically, the EFPs would allow these vessels to fish 200 traps above their 800–trap allocation and exempt them from the lobster fishery regulations at 50 CFR part 697: (1) Permit, tagging, and trap limit requirements under § 697.4(a) and (d), and § 697.19(a)(2) and (c); (2) temporary possession of lobster less than the minimum carapace size specified at § 697.20(b)(1) and (2) for data collection purposes; (3) trap tag identification requirements at § 697.21(a)(2); and (4) deployment and gear configuration requirements at § 697.21(b)(2).

The MEDMR submitted a request for a renewal of the 2002/2003 Jonah crab experiment on March 10, 2003. Additional information and data required to supplement the application was received on June 10, 2003. The original application anticipated the need for 2 additional years beyond the first year in order to gauge the effectiveness of the gear modifications and collect the data necessary to support a potential permanent exemption to the lobster gear regulations. Along with the bycatch reduction objective, complementary goals of the EFP would be to: (1) contribute to the development of year-round Jonah crab markets; (2) provide additional economic opportunities for lobster and crab fishermen who are currently being held to a maximum trap limit; and (3) provide important biological and demographic data on the Jonah crab resource, thus contributing to baseline information on the Jonah crab life cycle and population structure.

The proposed experimental fishery would take place from September 15, 2003, to September 15, 2004, in the EEZ portion of NLMA1 described at 50 CFR 697.18(a)(1). The proposed EFP would require that the experimental gear employ escape vents that are larger (and in greater numbers) than standard lobster traps. The side- and top-entry trap dimensions would be the same as that which was authorized for the initial EFP.

Comparing the top-entry, side-entry, and standard lobster trap designs, the MEDMR logbook data thus far suggest that a modified side-entry trap may be the best design for targeting Jonah crabs with negligible lobster bycatch (and other regulated species), indicating that the proposed experimental traps are extremely selective for the targeted species. There were 88 sublegal and 17 legal lobster caught in 3,360 side-entry trap hauls (3,900 total experimental trap hauls thus far). All lobster bycatch was returned to the sea alive. The catch of Jonah crabs under the EFP was small when contrasted with Maine landings in the crab fishery as a whole (approximately 36,000 lb (7257 kg) of Jonah crabs caught under the EFP with 9.5 million lb (4309 mt) caught overall--0.4 percent of the total landings).

All lobsters caught incidentally to the catch of Jonah crabs, as well as all crabs smaller than the MEDMR minimum size of 5 inch (127 mm) carapace width, and all other bycatch, would continue to be returned to the sea promptly after data collection. The MEDMR remains committed to providing the same level of observer coverage as in the previous year's experiment (2 trips per month). Observer data would continue to complement the information collected by participants through the MEDMR-supplied logbooks, along with detailed fisheries information (e.g., bycatch information, molt condition, etc.).

The August 13, 2002, Biological Opinion on the Jonah crab EFP analyzed impacts on protected resources over the anticipated time frame of the experiment (1 year initially and renewal for 2 additional years). The Reasonable and Prudent Alternative (RPA) that was developed for this fishery as a result of the consultation (neutrally buoyant line on all experimental traps during the June-October time frame) would remain in effect during the 2003/2004 EFP. As was the case previously, EFP participants would be required to comply with the Atlantic Large Whale Take Reduction Plan requirements in effect at the time of the experiment. The 2002/2003 EFP had the potential to deploy 2,000 additional vertical lines, assuming an additional 20,000 traps (200 traps x 100 participants) with a 10–trap minimum per vertical line. In 2002–2003, actual participation levels were 15 percent of the authorized maximum and the number of traps set per fisher ranged from 20–100 experimental traps. No interactions with protected species or marine mammals were reported during the 2002/2003 EFP. The proposed EFP would not represent a change or redistribution of effort, therefore further consultation is not necessary.

The EA prepared for the 2002 Jonah crab EFP concluded that the activities conducted under the 2002/2003 EFP were consistent with the goals and objectives of the lobster fishery under the ACFCMA and would have no negative environmental impacts including impacts to essential fish habitat, marine mammals, and protected species. The draft 2003 Amendment to the 2002 EA makes a preliminary determination that the proposed experimental fishery, including cumulative effects, would not significantly affect the quality of the human environment.

Based on the results of the EFPs, this action may lead to future rulemaking.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–17380 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 131
Wednesday, July 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 3, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela__Beverly__OIRA__Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained be calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Suggestions for changes to NAL Agricultural Thesaurus Form.

OMB Control Number: 0518—New.

Summary of Collection: The National Agricultural Thesaurus is a publication of the National Agricultural Library (NAL). The proposed ''Proposal Form'' is an instrument by which NAL thesaurus staff may receive feedback from online users of the thesaurus. Users may suggest additions or other changes to the thesaurus. The thesaurus staff will review each suggestion via a Proposal Review Board and provide feedback to the user.

Need and Use of the Information: Information to be submitted includes, user contact information (name, affiliation, email, phone), the proposed changes to the thesaurus, the field of study or subject area of the term being proposed, justification for the change, and any reference material which the user would like to provide as background information. The information collected will help NAL thesaurus staff to make improvements to the content and organization of the thesaurus. Failure of the NAL thesaurus staff to collect this information would significantly inhibit public relations with their users.

Description of Respondents: Federal Government; Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 250.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 42.

Agricultural Research Service

Title: Electronic Mailing List Subscription Form— Nutrition and Food Safety.

OMB Control Number: 0518–New.

Summary of Collection: The National Agricultural Library's Food Information Team (FIT) currently maintains several on-line discussion groups. The proposed ''Electronic Mailing List Subscription Form'' would give individuals working in the area of nutrition and food safety an opportunity to participate in these groups. Data collected using this form will help FIT determine a person's eligibility to participate in these discussion groups. The authority for the National Agricultural Library (NAL) to collect this information is contained in the CFR, Title 7, Volume 1, Part 2, and Subpart K, Sec. 2.65 (92).

Need and Use of the Information: NAL will collect the name, email address, job title, job location, mailing address and telephone number in order to approve subscription for nutrition and food safety on-line discussion groups. Failure to collect this informatin would inhibit NAL's ability to provide subscription services to these discussion groups.

Description of Respondents: State, Local and Tribal Government; Individuals or households; Federal Government.

Number of Responses: 1,000.

Frequency of Responses: Reporting : Monthly; Annually.

Total Burden Hours: 17.

Farm Service Agency

Title: Payment Eligibility/Limitation Determinations Under the Noninsured Crop Disaster Assistance Program.

OMB Control Number: 0560–0096.

Summary of Collection: The Farm Service Agency (FSA) administers certain farm programs in which the payments are subject and not subject to the established payment limitations. The Farm Security and Rural Investment Act of 2002 amended the provisions of the Food Security Act of 1985 to provide for a $40,000 limitation per crop year on the direct payments; $65,000 per crop year on counter-cyclical payments, $75,000 per crop year on the amount of marketing loan gains and loan deficiency payments a person may receive; and apply the payment eligibility provisions of the 1985 Act to payments made under the direct and counter-cyclical payment program contract, marketing loan gains and loan deficiency payments. All program participants must provide certain information concerning their farming operations for FSA to determine both the eligibility for payment and the number of ''persons'' for the application of the payment limitation required for the respective program. Information is captured on different forms depending upon the nature and the type of program participant's farming operation.

Need and Use of the Information: FSA will collect information to determine the eligibility for payment and the number of ''persons'' for the application

of the payment limitation required for the respective program. Without the date, FSA cannot determine whether the individual or the entity requesting program benefits is eligible and or in compliance with the statutory and regulatory requirements of payment eligibility and payment limitation. FSA and the National Appeals Division also use the information on review in the event an appeal is filed by the producer regarding any of the determinations.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 123,000.

Frequency of Responses: Reporting: On occasion; Other (as needed).

Total Burden Hours: 237,871.

Farm Service Agency

Title: End-Use Certificate Program.

OMB Control Number: 0560–0151.

Summary of Collection: Public Law 103–181, Section 321(f) of the North American Free Trade Agreement Implementation Act mandates that the Secretary of Agriculture shall implement, in coordination with the Commissioner of Customs and Border Protections, a program requiring that end-use certificates be included in the documentation covering the entry into the United States of any wheat originating from Canada. The end-use certificate program was designed to ensure that Canadian wheat does not benefit from USDA or CCC-assisted export programs.

Need and Use of the Information: The information collected on the end-use certificate is used in conjunction with USDA's domestic origin compliance review process during quarterly audits of contractors involved in foreign food assistance programs. The form FSA–750 ''End-Use Certificate for Wheat'' is used by approximately 200 importers of Canadian wheat to report entry into the United States. Form FSA–751, ''Wheat Consumption and Resale Report'' is used by millers and exporters to report final disposition of Canadian wheat in the U.S.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 421.

Frequency of Responses: Reporting: On occasion; Quarterly.

Total Burden Hours: 4,520.

Farm Service Agency

Title: Highly Erodible Land Conservation and Wetland Conservation (7 CFR Part 12).

OMB Control Number: 0560–0185.

Summary of Collection: The Food Security Act of 1985 as amended by the Federal Agriculture Conservation and Trade Act of 1990 and the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), and the Agricultural Assistance Act of 2003 (the 2003 Act) provides that any person who produces an agricultural commodity on a field that is predominately highly erodible, converts wetland, or plants an agricultural commodity on converted wetland after December 23, 1985, shall be ineligible for certain program benefits. These provisions are an attempt to preserve the nation's wetland and to reduce the rate at which the conversion of highly erodible land occurs which contributes to the national erosion problem. In order to ensure that persons who request benefits subject to the conservation restrictions get technical assistance needed and are informed regarding the compliance requirements on their land, the Farm Service Agency (FSA) collects information using several forms from producers with regard to their financial activities on their land that could affect their eligibility for requested USDA benefits.

Need and Use of the Information: Information must be collected from producers to certify that they intend to comply with the conservation requirements on their land to maintain their eligibility. Additional, information may be collected if producers request that certain activities be exempt from provisions of the statute in order to evaluate whether the exempted conditions will be met. The collection of information allows the FSA county employees to perform the necessary compliance checks and fulfill USDA's objectives towards preserving wetlands and reducing erosion.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 200,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 251,153.

Animal and Plant Health Inspection Service

Title: Importation of Animal & Poultry, Animal/Poultry Products, Certain Animal Embryos, Semen, and Zoological Animals.

OMB Control Number: 0579–0040.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis and tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth disease and rinderpest. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. To fulfill this mission APHIS must collect pertinent information from those individuals who import animals and poultry, animal products, zoological animals, or animal germplasm into the United States. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information from foreign animal health authorities seeking to engage in the regionalization process. The information includes such data as the last reported outbreak of a given animal disease in the region, the trading practices engaged in by the region, and the intensity of the disease surveillance activities occurring in the region. This vital information helps APHIS to ensure that these imports pose a negligible risk of introducing exotic animal diseases into the United States. If the information was not collected, it would cripple or destroy APHIS ability to protect the United States from exotic animal disease incursions.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 169,921.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 64,870.

Animal and Plant Health Inspection Service

Title: Federal Plant Pest and Noxious Weeds Regulations.

OMB Control Number: 0579–0054.

Summary of Collection: The Plant Protection and Quarantine Program of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture is responsible for preventing plant pests and noxious weeds from entering the United States, preventing the spread of pests and weeds not widely distributed in the United States, and eradicating those imported pests and weeds when eradication is feasible. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information to evaluate the risk associated with the proposed movement of plant pest noxious weeds, and soil. APHIS will also collect information to monitor operations at facility to ensure permit conditions are being met. The information is used to determine whether a permit can be issued, and also to develop risk-mitigating conditions for the proposed movement. If the information were not collected,

APHIS ability to protect the United States from a plant pest or noxious weed incursion would be significantly compromised.

Description of Respondents: Business or other for-profit; Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 39,962.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 38,133.

Animal and Plant Health Inspection Service

Title: Animal Welfare Act, Part 3.

OMB Control Number: 0579–0093.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) (Public Law 890544) enacted August 24, 1966, required the U.S. Department of Agriculture, (USDA), to regulate the humane care and handling of dog, and nonhuman primates. The legislation was the result of extensive demand by organized animal welfare groups and private citizens requesting a Federal law covering the transportation, care, and handling of laboratory animals. The Animal and Plant Health Inspection Service (APHIS), Animal Care (AC) has the responsibility to enforce the Animal Welfare Act (7 U.S.C. 2131–2156) and the provisions of 9 CFR, Subchapter A, which implements the Animal Welfare Act.

Need and Use of the Information: APHIS will collect information to insure that animal used in research facilities or exhibition purposes are provided humane care and treatment. The information is used to ensure those dealers, exhibitors, research facilities, carriers, etc., are in compliance with the Animal Welfare Act and regulations and standards promulgated under this authority of the Act.

Description of Respondents: Business or other for-profit; Not for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 5,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 34,918.

Animal and Plant Health Inspection Service

Title: Conifer Solid Wood Packing Material to China, Export Certification.

OMB Control Number: 0579–0147.

Summary of Collection: The Plant Protection and Quarantine Program of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests and weeds when eradication is feasible. The Federal Plant Pest Act authorizes the Department to carry out this mission. APHIS provides export certification services to assure other countries that the plants and plant products (as well as associated packing materials) they are receiving from the United States are free of prohibited (or regulated) plant diseases and insect pest. Effective January 1, 2000, the government of China requires goods from the United States to be accompanied by either a statement from the exporter that the shipment does not contain any softwood (conifer) packing materials, or by an APHIS-issued certificate certifying that the conifer packing materials in the shipment have been heat treated by being subjected to a minimum core temperature of 56 degrees Celsius for 30 minutes. APHIS will collect information using form PPQ 553, ''Certificate of Heat Treatment.''

Need and Use of the Information: APHIS will collect the names and address of the exporter and the consignee and a description of the consignment. APHIS will also collect information certifying that heat treatment has been performed, as well as the actual certification. The information is needed to assure China that conifer packing materials from the United States do not harbor insect pests such as the pine wood nematode. If the information is not collected, this would cause China to refuse any shipments from the United States that contained conifer packing materials.

Description of Respondents: Business or other for-profit; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 6,500.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,808.

Animal and Plant Health Inspection Service

Title: Field Testing of Plants Engineered to Produce Pharmaceutical and Industrial Compounds.

OMB Control Number: 0579–0216.

Summary of Collection: Under the authority of the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture has delegated to the Administrator of the Animal and Plant Health Inspection Service (APHIS) the authority to regulate the introduction (importation, interstate movement or release into the environment) of organisms and products altered or produced through genetic engineering, where any such organism may be a plant pest or that there is reason to believe are plant pests (7 CFR Parts 330 and 340, Plant Pest; Introduction of Genetically Engineered Organisms or Products). Since the inception of the biotechnology regulatory program in USDA, APHIS in 1987 with the publication of 7 CFR Parts 330 and 340 thousands of field tests have been performed safely with plant engineered to contain agronomic improvement traits such as resistance to disease, pests or tolerance to specific herbicides. APHIS will collect information through permitting procedures defined in the permit application APHIS Form 2000, ''Application for Permit or Courtesy Permit Under 7 CFR 340.''

Need and Use of the Information: APHIS will collect information to monitor, audit and verify compliance with more stringent permitting conditions for pharmaceutical manufacturing plants traits. APHIS will also collect information to ensure that no volunteers or regulated material is allowed to remain to be disseminated into the environment. Without the required information, APHIS could not carry out its mission to prevent the introduction or dissemination of plant pests in the United States.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 12.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 804.

Food and Nutrition Service

Title: Summer Food Service Program Claim for Reimbursement.

OMB Control Number: 0584–0041.

Summary of Collection: The Summer Food Service Program Claim for Reimbursement Form is used to collect meal and cost data from sponsors to determine the reimbursement entitlement for meals served. The form is sent to the Food and Nutrition Service's (FNS) Regional Offices where it is entered into a computerized payment system. The payment system computes earnings to date and the number of meals to date and generates payments for the amount of earnings in excess of prior advance and claim payments. To fulfill the earned reimbursement requirements set forth in the Summer Food Service Program Regulation issued by the Secretary of Agriculture (7 CFR 225.9), the meal and cost data must be collected on the FNS–143 claim form.

Need and Use of the Information: FNS will collect information to manage, plan, evaluate, and account for

government resources. The reports and records are required to ensure the proper and judicious use of public funds. If the information is not collected on the claim form, the sponsor could not receive reimbursement.

Description of Respondents: Not-for-profit; institutions; State, Local or Tribal Government.

Number of Respondents: 212.

Frequency of Responses: Recordkeeping; Reporting: Other (Summer).

Total Burden Hours: 610.

Food and Nutrition Service

Title: Coupon Account and Destruction Report.

OMB Control Number: 0584–0053.

Summary of Collection: Section 7 of the Food Stamp Act of 1977, requires the Secretary to develop appropriate procedures for determining and monitoring the amount of food coupon inventories maintained by State agencies for the Food Stamp Program. The Food and Nutrition Service (FNS) administers and Food Stamp Program on behalf of the Secretary of Agriculture and issues regulations which ensure the proper control and accounting for food stamp coupons that are no longer usable. Form FNS–471 is used by FNS to obtain consistent documentation from State agencies to account for unusable coupons as well as coupons destroyed.

Need and Use of the Information: FNS uses the information gathered through monthly submissions of the FNS–471 to substantiate benefit de-obligations reported by State agencies, reconcile coupon inventory reports, and determine benefits returned as payment on claims.

Description of Respondents: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 3,896.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 5,474.

Food and Nutrition Service

Title: WIC Federal and State Agreement.

OMB Control Number: 0584–0332.

Summary of Collection: The Women, Infants, and Children (WIC) and the Farmers' Market Nutrition Program (FMNP) are carried out by the U.S. Department of Agriculture under Section 17 of the Child Nutrition Act (CNA) of 1966, as amended. Form FNS–399 is the agreement between USDA and the State agency. The agreement empowers USDA to release funds to the State agency to operate the Women, Infants and Children (WIC) Program or the Farmers' Market Nutrition Program (FMNP).

Need and Use of the Information: FNS will collect information to authorize payment of cash grants to State agencies, which operate the program locally through nonprofit organizations and must ensure coordination of the Program among the appropriate agencies and organizations. Each FMNP or WIC State agency desiring to administer the program shall annually enter into a written agreement with USDA for administration of the program in the jurisdiction of the State agency. If the information is not collected, Federal funds cannot be provided to the State agency without a signed agreement.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 101.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 25.

Food and Nutrition Service

Title: Supplemental Form for Collecting Taxpayer Identifying Numbers.

OMB Control Number: 0584–0501.

Summary of Collection: Section 3100(y) of the Debt Collection Improvement Act of 1996 (Public Law 104–134) requires all Federal agencies to obtain taxpayer identifying numbers (TINs) from all individuals and entities they do business with, and to furnish the TIN whenever a request for payment is submitted to Federal payment officials. A taxpayer identifying number can be either a Social Security Number or an Employer Identification Number. The Food and Nutrition Service will collect information using form FNS–711.

Need and Use of the Information: FNS will collect taxpayer identify numbers from individuals and entities receiving payments directly from the agency under any of the various nutrition and nutrition education programs. The information will be collected at the time of program application and will only be collected once unless an entity renews its application or reapplies for program participation. If the information is not collected, FNS would be unable to include taxpayer identifying numbers with each certified request for payment.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions.

Number of Respondents: 800.

Frequency of Responses: Reporting: On occasion; Other (At time of app.)

Total Burden Hours: 66.

Rural Housing Service

Title: 7 CFR 1942–A, Community Facility Loans.

OMB Control Number: 0575–0015.

Summary of Collection: The Rural Housing Service (RUS) is a credit agency within the Rural Development (RD) mission area of the U.S. Department of Agriculture (USDA). The Community Programs Division of the RHS administers the Community Facilities program under 7 CFR Part 1942, Subpart A. Rural Development provides loan and grant funds through the Community Facilities program to finance many types of projects varying in size and complexity, from large general hospitals to small fire trucks. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Need and Use of the Information: RHS' field offices will collect information from applicants/borrowers to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 3,231.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 51,441.

Rural Utilities Service

Title: Certification of Authority.

OMB Control Number: 0572–0074.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency that makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq,* as amended, (RE Act) gives authorization to the Secretary to make loans for rural electrification for the purpose of furnishing and improving electric and telephone service in rural areas. RUS will manage the loan programs as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. A major factor in managing loan programs is controlling the advancement of funds. RUS Form 675, Certificate of Authority, allows this

control to be achieved by providing a list of authorized signatures against which signatures requesting funds are compared.

Need and Use of the Information: RUS will collect information to ensure that only authorized representatives of the borrowers signs the lending requisition form. Without the information, RUS would not know if the request for a loan advance was legitimate or not and so the potential for waste, loss, unauthorized use, and misappropriation would be increased.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 625.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 63.

Rural Utilities Service

Title: 7 CFR 1717 Subpart Y, Settlement of Debt Owed by Electric Borrowers.

OMB Control Number: 0572–0116.

Summary of Collection: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). Only those electric borrowers that are unable to fully repay their debts to the government and who apply to RUS for relief will be affected by this collection of information. The information collected will be similar to that which any prudent lender would require to determine whether debt settlement is required and the amount of relief that is needed.

Need and Use of the Information: RUS will collect information to determine the need for debt settlement; the amount of debt the borrower can repay; the future scheduling of debt repayment; and, the range of opportunities for enhancing the amount of debt that can be recovered.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,000.

Rural Utilities Service

Title: Water and Waste Disposal Programs Guaranteed Loans.

OMB Control Number: 0572–0121.

Summary of Collection: The Consolidated Farm and Rural Development Act authorizes Rural Utilities Service (RUS) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of water and waste disposal facilities primarily servicing rural residents with populations up to 10,000 residents. The reporting requirements to administer the Waste and Water Disposal Program relate to 7 CFR part 1780.

Need and Use of the Information: Rural Development's field offices will collect information from applicants/borrowers and consultants to determine eligibility and project feasibility. The information will help to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. There are agency forms required as well as other requirements that involve certifications from the borrower, lenders, and other parties. Failure to collect proper information could result in improper determinations of eligibility, use of funds and or unsound loans.

Description of Respondents: Business or other for-profit.

Number of Respondents: 6,000.

Frequency of Responses: Reporting: On occasion; Annually; Recordkeeping.

Total Burden Hours: 132,069.

Agricultural Marketing Service

Title: Reporting Requirements Under Regulations Governing Inspection and Grading Services of Manufactured or Processed Dairy Products.

OMB Control Number: 0581–0126.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621–1627), directs and authorizes the Department to develop standards of quality, condition, quantity, grading programs, and services to enable a more orderly marketing of agricultural products. The Government, industry and consumer will be well served if the Government can help insure that dairy products are produced under sanitary conditions and that buyers have the choice of purchasing the quality of the product they desire. The dairy grading program is a voluntary user fee program. In order for a voluntary inspection program to perform satisfactorily with a minimum of confusion, information must be collected to determine what services are requested.

Need and Use of the Information: The information collected is used to identify the product offered for grading, to identify and contact the individuals responsible for payment of the grading fee and to identify the person responsible for administering the grade label program. The Agriculture Marketing service will use forms to collect essential information to carry out and administer the inspection and grading program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 360.

Agricultural Marketing Service

Title: Sweet Cherries Grown in Designated Counties in Washington, M.O. 923.

OMB Control Number: 0581–0214.

Summary of Collection: The Agricultural Marketing Service (AMS) has the responsibility for the national commodity research and promotion programs. The Agriculture Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. The Market Order No. 923 authorizes the issuance of grade, size, quality, maturity, pack, container, inspection and reporting requirements. The order authorizes the establishment of marketing research and development projects.

Need and Use of the Information: Forms were developed as a convenience to persons who are required to file information with the Committee. Handlers or receivers desiring to ship or receive sweet cherries for grading or packing outside the production area must complete the application forms. This form is completed prior to receiving any production area sweet cherries each year. The handlers or receivers report all Washington sweet cherries shipped or received for grading or packing outside the production area.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5.

Food and Nutrition Service

Title: Quality Control Review Schedule.

OMB Control Number: 0584–0299.

Summary of Collection: States agencies are required to perform Quality Control (QC) review for the Food Stamp Program (FSP). The legislative basis for the operation of the QC system is provided by Section 16 of the Food Stamp Act of 1977. The FNS–380–1, Quality Control Review Schedule is for State use to collect both QC data and case characteristics for the Food Stamp Program and to serve as the comprehensive data entry form for FSP QC reviews.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to monitor and reduce errors, develop policy strategies and analyze household characteristic data. In addition, FNS will use the data to determine sanctions and incentive based on error rate performance, and to estimate the impact of some program changes to FSP participation and costs by analyzing the available household characteristic data.

Description of Respondents: State, Local, or Tribal Government; Federal Government; Individuals or households.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Weekly; Monthly.

Total Burden Hours: 58,729.

Sondra A. Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–17347 Filed 7–8–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lower Tucannon Ecosystem Maintenance Project, Umatilla National Forest, Columbia County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of watershed restoration and ecosystem maintenance actions in the Little Tucannon sub-watershed of the Upper Tucannon watershed located on the Umatilla National Forest. The Lower Tucannon analysis area is located approximately 12 air miles southwest of Pomeroy, Washington. Proposed Actions include: landscape prescribed fire, commercial timber harvest, and native plant species re-vegetation to promote and improve ecosystem sustainability, reducing fuels to historic levels in dry forest types, through mechanical methods and prescribed fire; move dry and moist forest types, in the analysis area, closer to historic vegetative stocking levels and species composition; and conduct road obliteration, road reconstruction, and construction of temporary roads. The Proposed Actions are being considered together because they represent either connected or cumulative actions. This EIS will be consistent with the 1990 Umatilla National Forest Land and Resource Management Plan (Forest Plan) for the, which provides overall guidance for forest management of the area. All activities associated with this proposal will be designed for maintenance or improvement of the forest ecosystems, watersheds, vegetation, wildlife, and fisheries resources.

DATES: Written comments concerning the scope of the analysis must be received by August 30, 2003.

ADDRESSES: Send written comments and suggestions to Monte Fujishin, District Ranger, Pomeroy Ranger District, 71 West Main, Pomeroy, Washington 99347.

FOR FURTHER INFORMATION CONTACT: Randall Walker, Project Team Leader, Pomeroy Ranger District. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: The project area contains approximately 16,300 acres within the Umatilla National Forest in Columbia County, Washington. It encompasses an area of the Upper Tucannon watershed from San Sousi Spring along the Little Tucannon and Tucannon Rivers north to the National Forest Boundary. Legal description is as follows: portions of Sections 1, 2, 11, 12, 13, and 14 of Township 8 North, Range 40 East; Sections 5 and 6 of Township 8 North, Range 41 East; Sections 24, 25, 26, 35, and 36 of Township 9 North, Range 40 East; Sections 2, 3, 4, 9–24, and 26–35 of Township 9 North, Range 41 East, W.M. surveyed. All proposed activities are outside the boundaries of any wilderness area. Approximately 7,360 acres of the analysis area are within Inventoried Roadless Areas (Willow Springs (6,100 acres) and Meadows Creek (1,250 acres)).

Purpose and Need for Action. Findings from the Tucannon Watershed Assessment identify that past fire suppression activities, selective harvest, and recent drought conditions have contributed to the ongoing degradation of forest ecosystem sustainability in the watershed. These past activities and climate conditions have transformed the ecosystem processes and altered stand structure, tree species composition, and the tree stocking levels of forest stands in the watershed to non-historic levels, and have directly contributed to increased fuel loading. The purpose of this project is to develop and analyze a combination of actions that best responds to the recommendations of the responsible official and the findings of the Tucannon Watershed Assessment. The need for prompt action emphasizes implementation of ecosystem management projects to promote healthy watershed conditions. To promote ecosystem based management there is a need to provide direction to encourage and sustain long-term vegetation enhancement, wildlife habit improvements, long-term recreation use planning, and the maintenance and/or improvement of sustainable fish and wildlife habitat.

Propose Action. The Proposed Action will be consistent with the Forest Plan, as amended, which provides goals, objectives, standards, and guidelines for the various activities and land allocations on the forest. The following acres of various land allocations located within the analysis area will be affected: A3-Viewshed 1 (54 acres); A6-Developed Recreation (7 acres); C1-Dedicated Old Growth (508 acres); C3-Big Game Winter Range (8,847 acres); C4-Wildlife Habitat (4,256 acres); C5-Riparian and Wildlife (523 acres); C8-Grass-Tree Mosaic (1,280 acres); and E2-Timber and Big Game (775 acres). The total analysis area is 16,251 acres. Timber management (harvest) for the project is only proposed in management area C3, C4, and E2. Fuels treatment for this project are proposed in all management allocations. The Forest Service proposes to reduce conifer stocking levels on approximately 10,000 acres of forested land (5,000 acres of which are within roadless) by removing diseased, overstocked, or high risk trees through manual thinning and prescribed burning. Approximately 4,500 (no acres within roadless) of the above 10,000 acres may be commercial thinned, yielding approximately 20 million board feet of timber. Approximately one half of these commercial acres would require helicopter yarding. Less than two miles of temporary road construction would be needed to access timber harvest areas. All temporary roads would be obliterated following completion of sale activities. No road construction or reconstruction is being proposed within the roadless areas. An additional 3.5 miles of existing roads that are no longer in use could be obliterated by natural or mechanical methods. The obliteration method used would be based on site-specific conditions. Some of the proposed road to be obliterated is located within the roadless areas. An estimated 17.5 miles of road resurfacing/reconstruction would be needed to haul timber and accomplish other treatments. This proposal also includes prescribed burning of 4,500 acres within harvest units and 5,500 acres of forested land outside of harvest units. Approximately 5,000 acres of non-forested grasslands are also proposed for prescribed burning.

A primary result of these activities would be a reduction of accumulated down fuel loadings, which would dramatically decrease the potential for future high intensity wildfires and improve the chance to keep fires that do start to a smaller size. Furthermore, it would prepare the sites for regeneration, enhance wildlife habitat and maintain forest health by bringing fuel levels closer to historic levels. Some thinning of saplings would occur to reduce excessive ladder fuels and lower the risk of crown fire and catastrophic wildfire while allowing residual trees to grow at a sustainable rate. The only ground disturbing activity proposed is the obliteration of 3.5 miles of existing road. Ladder fuel reduction using chainsaws and prescribed fire is proposed for those areas that have become overgrown with smaller diameter trees thus creating a fuel profile that acts as a ''fire ladder'' to the crowns of the dominant overstory trees.

Issues. The following are the preliminary issues identified: Wildlife habitat; Fuels/Catastrophic Wildfire Risk; Ecosystem Sustainability; Air Quality; Water Quality/Riparian Habitat; Threatened; Endangered and Sensitive (TES) Species; Road Management; Noxious Weeds; Recreation; and Urban interface. This list will be verified, expanded, or modified based on public scoping and interdisciplinary review of this proposal.

Alternative. The Forest Service will consider a full range of alternatives. One of these will be the ''no action'' alternative in which no active management activities would take place. Another alternative will examine restoration involving no commercial timber harvest. Additional alternatives will examine varying levels, locations, and methods for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values. The Forest Service has begun discussions with the Washington State Department of Fish and Wildlife with the objective of looking at all watershed activities in a concerted cooperative process for comprehensive watershed restoration between ownerships.

Scoping Process. Public participation will be especially important at several points during the analysis, beginning with the scoping process. Initial scoping began with the project listing in the 1997 Winter Edition of the Umatilla National Forest's Schedule of Proposed Actions. A public meeting will be scheduled for fall 2003, to discuss the project and other meetings will be scheduled as needed. This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations that may be interested in, or affected by the proposal. This input will be used in preparation of the draft EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: The draft EIS expected to be filed with the Environmental Protection Agency (EPA) and to be available to the public for review February 2004. The comment period on the draft EIS will be 45 days from the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be released September 2004.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections and made available to the Forest Service at a time when it can meaningful consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specified as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed at the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Forest Service is the lead agency. Monte Fujishin, Pomeroy District Ranger, is the responsible official. The responsible official will decide which, if any, of the proposed projects will be implemented. The decision and reasons for the decision will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: June 27, 2003.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 03–17300 Filed 7–8–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss projects for 2003 and monitoring of 2002 projects. Agenda topics will include project proposal submissions and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on July 22, 2003, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: July 1, 2003.

Lesley W. Thompson,

Deputy Forest Supervisor.

[FR Doc. 03–17309 Filed 7–8–03; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Meeting Notice

Date and Time: July 15, 2003: 1 p.m.—5 p.m.

Place: Broadcasting Board of Governors, Room 3321, 330 Independence Avenue, SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: July 7, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–17513 Filed 7–7–03; 1:04 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Information and Communications Technology; Business Development Mission

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the overseas Business Development Mission described below. For a more complete description of the mission, obtain a copy of the mission statement from the contact officer indicated below.

Undersecretarial Business Development Mission, Belfast, Northern Ireland and Dublin, Republic of Ireland, November 17–21, 2003

Department of Commerce technology-sector leaders will convene a senior-level business development mission to Belfast, Northern Ireland (N.I.) and Dublin, Republic of Ireland (R.O.I.). The focus of the mission will be to help U.S. companies explore business opportunities in both Northern Ireland and the Republic of Ireland. The delegation will include approximately 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing the information and communications technology (ICT) sector.

Recruitment closes on September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Sujata S. Millick, Technology Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–6804, fax 202–219–3310, or visit *www.commerce.gov.*

SUPPLEMENTARY INFORMATION:

Goals for the Mission

The Business Development Mission will further both U.S. commercial policy objectives and advance specific U.S. business interests in the ICT sector. It is focused on: introducing U.S. companies to the markets of Northern Ireland and the Republic of Ireland and promoting expanded commercial opportunities in these areas; assisting small and new-to-market U.S. firms in evaluating the market potential for their products and to gain an understanding of how to operate successfully in the markets of Northern Ireland and the Republic of Ireland; highlighting the accessibility of the market and the successes of U.S. businesses in the markets of Northern Ireland and the Republic of Ireland; and fostering dialogue between policy makers and academics in the technology arena in the United States, Northern Ireland, and the Republic of Ireland.

Scenario for the Mission

The Business Development Mission will provide participants with exposure to high-level business and government contacts and an understanding of market and technology trends and the commercial environment of Northern Ireland and the Republic of Ireland. U.S. Embassy and U.S. Consulate General officials will provide detailed briefings on the economic, commercial and political climates, and participants will receive individual counseling on their specific interests from local U.S. Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Representational events also will be organized to provide mission participants with opportunities to meet Northern Ireland's and the Republic of Ireland's business and government representatives, as well as U.S. business people living and working in Northern Ireland and the Republic of Ireland.

The tentative trip itinerary is as follows:

Nov 16—Arrive Belfast, Northern Ireland; evening events and briefing

Nov 17—One-on-One Business Meetings in Belfast; group policy meetings

Nov 18—Business and Policy Meetings in Northern Ireland; Travel to Dublin, Republic of Ireland

Nov 19—One-on-One Business Meetings, group policy meetings, mission events, and briefings in Dublin

Nov 20—One-on-One Business Meetings, group policy meetings, mission events, and briefings in Dublin

Nov 21—Departure for the United States

The precise schedule will depend in part on the availability of local government and business officials and the specific goals of the mission participants.

Criteria for Participation of Companies

Recruitment

The recruitment of mission members will be conducted in an open and public manner utilizing Commercial Service Export Assistance Centers, International Trade Administration industry teams, and Technology Administration and National Telecommunications and Information Administration teams. Promotion will include publication of notice of the event in the **Federal Register**, direct mailing, e-mailing, broadcast fax, press releases to appropriate media, posting on the Commerce Department trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet websites, promotion at domestic exhibitions and conferences, and publicized announcements through a network of business organizations. Companies will be selected according to the criteria set out below. Approximately 10–15 companies will be selected.

Eligibility

Participating companies must be incorporated in the United States. A company is eligible to participate only if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

Selection Criteria

Company participation will be determined on the basis of:

- Level of seniority of designated company representatives and consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Potential for business activity in Northern Ireland and the Republic of Ireland as applicable;
- Timely receipt of a completed application and participation agreement signed by a company officer and the participation fee; and
- Provision of adequate information on the company's products and/or services, and communication of the company's primary objectives to facilitate appropriate matching with potential business partners.

In addition, the Department may consider whether the company's overall business objectives, including those of any U.S. or overseas affiliates, are fully consistent with the mission's objectives. Any partisan political activities of an applicant, including political contributions, will be entirely irrelevant to the selection process.

Time Frame for Applications

Applications for the Business Development Mission to Northern Ireland and the Republic of Ireland will be made available on or around July 11, 2003. The fee to participate in the mission will be between $ 3,000.00 and $3,500.00 and will not cover travel, lodging, or incidental expenses. For additional information on the Business Development Mission or to obtain an application, businesspersons should be referred to Sujata S. Millick, Technology Administration, U.S. Department of Commerce, 202–482–6804. Applications should be submitted to the Office of International Technology, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4411, Washington, DC 20230, (or via facsimile at 202–219–3310) by September 19, 2003, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

For Further Information Contact: Dr. Sujata S. Millick, U.S. Department of Commerce, telephone 202–482–6804.

Dated: July 2, 2003.

Ken Ferguson,

Acting Director, Office of International Technology, Technology Administration, Department of Commerce.

[FR Doc. 03–17306 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–809]

Certain Hot-Rolled Carbon Steel Flat Products From South Africa: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa in response to requests by petitioners, Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation, and Nucor Corporation. The review covers shipments of this merchandise to the United States for the period May 3, 2001 through August 31, 2002, by Iscor Ltd. (Iscor), Saldanha Steel Ltd. (Saldanha) and Highveld Steel & Vanadium Corp. Ltd. (Highveld). Iscor, Saldanha and Highveld informed the Department that they would not be participating in the review. We preliminarily determine that the application of adverse facts available (AFA) is warranted with respect to Iscor, Saldanha and Highveld. For our analysis on this issue see the ''Preliminary Results of Review'' section below.

EFFECTIVE DATE: July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Scot Fullerton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230 at (202) 482–0197 or (202) 482–1386, respectively.

Background

On September 19, 2001, the Department published in the **Federal Register** the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa (66 FR 48242). On September 30, 2002, in accordance with section 751(a) of the Tariff Act of 1930 (the Act) and section 19 CFR 351.213(b) of the regulations, petitioners, Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (collectively, petitioners), requested a review of the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa. On September 30, 2002, petitioner, Nucor Corporation, also requested a review of this antidumping duty order. On October 24, 2002, we published a notice of ''Initiation of Antidumping Review.'' *See* 67 FR 65336. On December 30, 2002, Iscor and Saldanha (Iscor/Saldanha) informed the Department that the entity was unable to respond to the Department's questionnaire.[1] On January 21, 2003, Highveld informed the Department that it was withdrawing its participation in the administrative review.

On February 20, 2003, petitioners submitted timely new factual information and a proposed methodology to calculate a new total facts available margin for respondents. On March 26, 2003 and May 20, 2003 respectively, Highveld and Iscor/Saldanha submitted comments in response to petitioners' submission. Petitioners submitted rebuttal comments on May 7, 2003 and on May 27, 2003, respectively. On June 30, 2003 Highveld filed a response to petitioners' rebuttal comments, to which petitioners responded on July 2, 2003.[2]

[1] In the final results of the antidumping investigation, the Department determined that Iscor and Saldanha were affiliated, and should be treated as a single entity for purposes of the investigation. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 48242 (Sept. 19, 2001) (LTFV investigation). This was based on information on the public record of the contemporaneous countervailing duty investigation of hot-rolled products from South Africa that 1) Iscor is a 50 percent shareholder in Saldanha, and is in a position to exercise control of Saldanha's assets, and 2) both companies produce the subject merchandise. In this review, the Department requested that, if the circumstances had not changed, the two parties file a combined response. Although Iscor/Saldanha did not file any response, the December 30, 2002 letter declining to respond to the questionnaire was filed jointly.

[2] Both respondents submitted new factual information in several of their submissions. The Department rejected those submissions and asked respondents to re-file these respective submissions without new factual information. The Department then requested that petitioners re-file their comments to remove any references to new factual information that respondents had submitted.

Scope of the Antidumping Duty Order

For purposes of this review, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal, and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review. Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this review is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection), the written description of the merchandise under review is dispositive.

Period of Review

This is the first administrative review following the publication of the antidumping duty order. The period of review (POR) is May 3, 2001 through August 31, 2002.

Application of Facts Available

Pursuant to sections 776(a)(1) and (2) of the Act, if necessary information is not available on the record, or if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination. In this case, Iscor/Saldanha's and Highveld's stated decision not to participate in the review constitutes a refusal to provide the information necessary to conduct the Department's antidumping analysis, pursuant to section 776(a)(2)(A) of the Act. Moreover, respondents' non-participation significantly impedes the review process. *See* section 776(a)(2)(C) of the Act. Therefore, the Department must resort to facts otherwise available in reaching the applicable determination. Absent any response on the record from respondents, sections 782(d) and (e) do not apply.

Section 776(b) of the Act further provides that, in selecting from among the facts otherwise available, the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*see* also the Statement of Administrative Action (SAA), accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103–316 at 870). By refusing to respond to the Department's questionnaire, Iscor/Saldanha and Highveld have failed to cooperate to the best of their ability. The Department is unable to perform any company-specific analysis or calculate dumping margins,

if any, for the POR. Therefore, pursuant to section 776(b) of the Act, the Department has determined that an adverse inference is warranted with respect to Iscor/Saldanha and Highveld.

We note that, in selecting an AFA rate, the Department's practice has been to assign respondents who fail to cooperate with the Department the highest margin determined for any party in the less-than-fair-value (LTFV) investigation or in any administrative review. *See Sigma Corp.* v. *United States,* 117 F.3d 1401,1411 (Fed. Cir. 1997). As AFA, the Department is assigning the rate of 9.28 percent. This was the only rate in the notice of initiation of investigation. *See* 67 FR 65336. It is also the rate applied in the final determination of the investigation of sales at LTFV because we found in the investigation that the parties did not cooperate to the best of their ability and we applied AFA (*see* LTFV investigation). It is the rate currently in effect for all exporters. We preliminarily determine that it is appropriate to continue to apply this rate for purposes of these preliminary results.

Corroboration

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA clarifies that the petition is ''secondary information,'' and states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. We have previously examined the reliability of the 9.28 percent rate and found it to be reliable. *See Memorandum from Doug Campau to Barbara Tillman, Preliminary Determination of Certain Hot-Rolled Carbon Steel Flat Products From South Africa: Corroboration of Secondary Information,* dated April 23, 2001, and placed on the record of this review on June 30, 2003. We have re-examined the information used as facts available in the investigation and we consider it corroborated, and therefore reliable, for purposes of this first administrative review. Accordingly, we determine that the information from the petition remains the most appropriate basis for AFA.

The Department considers information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review,* 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as best information available (the predecessor to facts available) because the margin was based on another company's aberrational business expense that resulted in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. Moreover, the rate selected is the rate currently applicable to all exporters.

Accordingly, we determine that the highest rate from any previous segment of this administrative proceeding (*i.e.*, the rate of 9.28 percent for the determination of sales at LTFV) is in accord with the requirement of section 776(c) of the Act that secondary information be corroborated (*i.e.*, that it have probative value).

Preliminary Results of Review

As a result of our review, we preliminarily determine the antidumping margins for Iscor/Saldanha and Highveld, based on total adverse facts available, to be as follows:

Manufacturer/exporter	Time period	Margin (percent)
Iscor/Saldanha	05/03/01–08/31/02	9.28
Highveld	05/03/01–08/31/02	9.28

Duty Assessments and Cash Deposit Requirements

The Department shall determine, and the U.S. Bureau of Customs and Border Protection (BCBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to BCBP within 15 days of publication of the final results of review. Furthermore, the following deposit rates will be effective with respect to all shipments of certain hot-rolled carbon steel flat products from South Africa entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(2)(C) of the Act: (1) For Iscor/Saldanha and Highveld, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the all other rate established in the LTFV investigation, which is 9.28 percent. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C 1677f(i)(1)).

Dated: July 2, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–17374 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received a timely withdrawal of the sole request for an administrative review of the order on petroleum wax candles from the People's Republic of China for three companies. As such, in accordance with 19 CFR 351.231(d)(1), the Department is rescinding this administrative review for: Generaluxe Factory; Guangdong Xin Hui City Si Qian Art & Craft Factory; and, Sincere Factory Company.

EFFECTIVE DATE: July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos at (202) 482–2243, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 25, 2002, the Department published a notice initiating an administrative review on 108 candle companies for which a review was requested for the period August 1, 2001 through July 31, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review,* 67 FR 60210 (September 25, 2002).

On November 18, 2002, Wal-Mart Stores, Inc. (Wal-Mart) submitted a timely withdrawal of its request for an administrative review of three companies: Generaluxe Factory, Guangdong Xin Hui City Si Qian Art & Craft Factory, and Sincere Factory Company. Wal-Mart was the only party that requested a review of these three companies.

Rescission, in Part, of Review

Pursuant to section 351.213(d)(1) of the Department's regulations, the Department may rescind an administrative review, ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Because Wal-Mart has timely withdrawn its request for review within the ninety-day period, and because Wal-Mart was the sole party to request a review of these three companies, we are rescinding this administrative review, in part, for the period August 1, 2001 to July 31, 2002, for: Generaluxe Factory; Guangdong Xin Hui City Si Qian Art & Craft Factory; and, Sincere Factory Company. The Department will issue appropriate assessment instructions directly to the U.S. Bureau of Customs and Border Protection (BCBP) within 15 days of publication of this notice. The Department will direct the BCBP to assess antidumping duties for this company at the cash deposit rate in effect on the date of entry for entries during the period August 1, 2001 to July 31, 2002.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 351.213(d)(4) of the Department's regulations and, sections 751(a)(2)(c)) and 777(I)(1) of the Tariff Act of 1930, as amended.

Dated: June 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–17373 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–878]

Notice of Antidumping Duty Order: Saccharin from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (Suzhou Fine Chemicals Group Co., Ltd.) at (202) 482–3148, Javier Barrientos or Jessica Burdick (Shanghai Fortune Chemical Co., Ltd.) at (202) 482–2243 and (202) 482–0666, or Sally C. Gannon at (202) 482–0162; Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The final determination in this investigation was published on May 20, 2003. *See Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 68 FR 27530 (May 20, 2003) (*Final Determination*).

On June 6, 2003, the Department of Commerce (the Department) issued its amended final determination in the antidumping duty investigation of saccharin from the People's Republic of China (PRC). *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 68 FR 35383 (June 13, 2003) (*Amended Final*

Determination). In the A*mended Final Determination*, the Department amended the PRC-wide rate to correct a clerical error in the rate as published in the *Final Determination*.

On June 25, 2003, the International Trade Commission (ITC) published (68 FR 37863) and notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of less-than-fair-value imports of saccharin from the PRC.

Scope of the Order

The product covered by this order is saccharin. Saccharin is defined as a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) sodium saccharin (American Chemical Society Chemical Abstract Service (CAS) Registry ı128–44–9); (2) calcium saccharin (CAS Registry ı6485–34–3); (3) acid (or insoluble) saccharin (CAS Registry ı81–07–2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms.

The merchandise subject to this order is classifiable under subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS) and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and Customs (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection (BCBP)) purposes, the Department's written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct the BCBP to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of saccharin entered, or withdrawn from warehouse, for consumption on or after December 27, 2002, the date on which the Department published its notice of preliminary determination in the **Federal Register**.

Effective June 25, 2003, the date of publication of the ITC's final affirmative injury determination, BCBP officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. *See* Section 736(a)(3) and Section 737(b) of the Act. The ''PRC-wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/Exporter	Margin (percent)
Suzhou Fine Chemical Group Co., Ltd.	291.57
Shanghai Fortune Chemical Co., Ltd.	249.39
Kaifeng Xinhua Fine Chemical Factory	281.97
PRC-Wide	329.94

Pursuant to section 736(a) of the Act, this notice constitutes the antidumping duty order with respect to saccharin from the PRC. Interested parties may contact the Department's Central Records Unit, Room B-099 of the main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: July 2, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–17375 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060303D]

Atlantic Highly Migratory Species; Environmental Impact Statement (EIS) for Amendment 2 to the Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish and Sharks and Amendment 2 to the Atlantic Billfish FMP

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent (NOI) to prepare an EIS; request for comments.

SUMMARY: NMFS announces its intent to prepare an EIS under the National Environmental Policy Act to assess the potential effects on the human environment of proposed alternatives and actions under Amendment 2 to the FMP for Atlantic Tunas, Swordfish and Sharks, and Amendment 2 to the Atlantic Billfish FMP. The EIS is intended to address issues regarding quota allocation of Atlantic bluefin tuna (BFT), swordfish, and sharks among and within domestic fishing categories, examine management alternatives to improve and streamline the current Highly Migratory Species (HMS) limited access permit program, conduct a five year review of HMS essential fish habitat (EFH) identifications, and address exempted fishing and scientific research permitting issues consistent with rebuilding plans, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Atlantic Tunas Convention Act (ATCA), and other relevant Federal laws. NMFS is requesting comments on the above measures including, but not limited to, HMS quota allocations, permitting, revisions to the limited access management program, and updates to EFH information.

DATES: Comments on this action must be received no later than 5 p.m., local time, on November 6, 2003.

ADDRESSES: Written comments on this action should be mailed to Christopher Rogers, Chief, Highly Migratory Species Management Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to (301) 713–1917. Comments will not be accepted if submitted via email or Internet.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz at (301) 713–2347, Mark Murray-Brown (978) 281–9260, or Russell Dunn at (727) 570–5447.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act, and the Atlantic tuna, swordfish, and billfish fisheries are managed under the Magnuson Stevens Act and ATCA. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and the Atlantic Billfish Fishery Management Plan (Billfish FMP) are implemented by regulations at 50 CFR part 635. Copies of the HMS FMP and Billfish FMP are available for review (see **ADDRESSES**).

Background

Atlantic Bluefin Tuna Quota Allocations

Atlantic bluefin tuna are managed under a strict quota program in accordance with recommendations from

the International Commission for the Conservation of Atlantic Tunas (ICCAT) and domestic legislation, including ATCA which requires NMFS to allocate the quota from ICCAT to domestic fisheries. Allocation of BFT quota among the domestic fishing categories, as well as within each category, was formally established by percentage allocation in the HMS FMP based on traditional participation and use of quota. Since implementation of the HMS FMP in 1999, various aspects of the fisheries have changed that warrant a re-examination of the distribution of BFT quota, both among and within categories, to determine if the current percentage allocations best meet the objectives of the HMS FMP and attainment of optimum yield. For example, since implementation of the HMS FMP, fishing activity and catch rates within the General category have shifted and become more prevalent later in the fishing season. Also, NMFS is in receipt of a Petition for Rulemaking from the State of North Carolina to redistribute General category quota and specifically allocate quota for a late season, south Atlantic commercial handgear fishery (67 FR 69502, November 18, 2002). Similarly, the fishing patterns of several other domestic categories have changed, or are evolving, and thus the entire quota allocation scheme could benefit from an updated investigation to determine whether it still meets the needs of the fishery.

HMS Limited Access Permit Program

The HMS FMP established a limited access program for the commercial Atlantic swordfish and Atlantic shark fisheries to begin to rationalize harvesting capacity with the available quota and reduce latent effort while preventing further overcapitalization. To assist with enforcement and management of the program, permit restrictions were also placed on vessels fishing for bigeye, albacore, yellowfin and skipjack (BAYS) tunas in the Longline category. Implementation of the limited access program has proceeded since implementation of the HMS FMP and is executed via issuance of permits to eligible recipients in the commercial shark, swordfish and BAYS longline fisheries. Currently many of the eligible vessels are required to obtain up to three separate permits to legally participate in the limited access program. In addition, since implementation of the HMS FMP, NMFS has benefitted from receiving various recommendations to improve management of the program and better meet the intent to rationalize harvesting capacity. Some comments on limited access received to date include, but are not limited to, changing the upgrading restrictions, changing to gear-specific permits, consolidating the expiration date for all three permits, changing the incidental catch limits for incidental limited access permits, and re-opening the swordfish handgear permit category.

EFH Five Year Review

Under the Magnuson-Stevens Act, each FMP must describe and identify EFH for the fishery management unit, minimize to the extent practicable adverse effects on EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH. In 1999, NMFS identified EFH for all HMS and is planning to begin to conduct this five year review for all HMS within the EIS described in this action.

Swordfish Quota Allocation Issues

There are currently three categories among which the current north Atlantic swordfish quota is allocated: directed, incidental, and the reserve. The incidental category is allocated 300 metric tons (mt) dressed weight (dw). Recreational landings and landings reported by incidental permit holders are counted against the quota in the Incidental category. The Reserve category was primarily created to allow the United States to transfer quota to Japan as recommended by ICCAT in 2000. The Directed category is allocated the remainder. Commercial landings by directed and handgear permit holders are counted against directed category quota. In recent years, the swordfish quota has not been reached and the recreational fishery has begun to expand, which raises the question of whether a four category should be established for the recreational fishery. Additionally, at the moment, there is not a specified method of adding or removing quota to or from the Reserve category.

Shark Quota Allocation Issues

Currently, there are no quota allocations between user groups in the Atlantic shark fisheries. Once a commercial quota is reached, the commercial fishery is closed. This closure means that permit holders who target sharks or catch sharks incidental to their fishing operations can no longer land sharks incidentally. This situation has also led to confusion regarding accounting for all fishing mortality. Recreational fishermen do not have a quota but are limited by retention limits. To the extent that these issues are not resolved in Amendment 1 to the HMS FMP, NMFS may reconsider them in the EIS described in this action.

Exempted Fishing and Scientific Research Permits

Under 50 CFR 635.32, and consistent with 50 CFR 600.745, NMFS may authorize for limited testing, public display, and scientific data collection purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited (e.g., possession of prohibited species, possession of fish below the minimum size, possession of fish in a closed area). Exempted fishing may not be conducted unless authorized by an Exempted Fishing Permit (EFP) or a Scientific Research Permit (SRP) issued by NMFS in accordance with criteria and procedures specified in those sections. In Amendment 1 to the HMS FMP, NMFS is considering some changes to better account for issuing EFPs and SRPs and to better account for the fish collected under these permits. To the extent that these issues are not resolved in Amendment 1 to the HMS FMP, NMFS may reconsider them in the EIS described in this action.

Management Options

NMFS requests comments on management options for this action. Specifically, NMFS requests comments on the following issues and possible options: allocation of the BFT quota from ICCAT to domestic fishing categories as well as within each category; changing quota allocations in the swordfish fishery; potentially establishing quota allocations in the shark fishery; management options to improve the limited access permit program; ways to simplify and streamline quota and permitting administrative processes; and further rationalization of harvesting capacity. NMFS also requests comments on EFH identifications and the data that could be used to update and review existing identifications for all HMS. NMFS also requests comments on management options to improve the issuance of EFPs and SRPs and ways to ensure fish taken by permit holders are counted against the appropriate quota category. Comments received on these issues, as well as options offered to address the issues, will assist NMFS in determining the options for rulemaking to improve the management of Atlantic HMS.

NMFS intends to publish an Issues and Options paper summarizing the different options under consideration and will announce the availability of this document at a later date. NMFS will hold at least one scoping meeting to gather public comment on the issues

and options described here and in the forthcoming Issues and Options paper (time and location details of which will be announced in a subsequent **Federal Register** notification).

After scoping has been completed and public comment gathered and analyzed, NMFS will proceed with preparation of a draft EIS and amendments and proposed rule, which will include additional opportunities for public comment. Until the EIS, amendments, and associated documents are finalized or until other regulations are put into place, the current regulations regarding BFT, shark and swordfish quota allocations, limited access, EFH identifications, and EFP and SRP issuance remain in effect.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 1, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–17378 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070103B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of voluntary restrictions on anchored gillnet and lobster trap/pot fishing gear.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces that lobster trap/pot and anchored gillnet fishermen are requested to remove on a voluntary basis their gear from an area totaling approximately 1,640 square nautical miles (nm²) (5,625 km²), east of Cape Cod, MA for 15 days. These fishermen are also asked not to set additional gear during this period. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours July 3, 2003, through 2400 hours July 17, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On June 25, 2003, NMFS Aerial Survey Team reported a sighting of 11 right whales in the proximity of 42° 06′ N lat. and 69° 32′ W long. This position lies east of Cape Cod, MA. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

Because the Seasonal Area Management (SAM) East zone overlaps a portion of the DAM zone, this area is excluded from the DAM zone.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. NMFS requests the voluntary removal of lobster trap/pot and anchored gillnet gear and asks lobster trap/pot and anchored gillnet fishermen not to set any new gear in this area during the 15–day restricted period. The DAM zone is bound by a straight line connecting the following coordinates:

42°30′N, 70°06′W (NW Corner)
42°30′N, 69°24′W
41°49′N, 69°24′W
41°58′N, 69°00′W
41°42′N, 69°00′W
41°42′N, 69°59′W (MA Coast)
Follow MA Coast northward to
42°03′N, 70°06′W
42°30′N, 70°06′W

NMFS requests voluntary action within the DAM zone because, based on what is known about right whale migration, the animals will likely move

into other protected areas, such as the SAM East zone. The request for removal of gear and no setting of additional gear will be in effect beginning at 0001 hours July 3, 2003, through 2400 hours July 17, 2003, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**.

The request for voluntary action will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: July 2, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–17321 Filed 7–3–03; 11:08 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070103D]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder Monitoring Committee, Scup Monitoring Committee, Black Sea Bass Monitoring Committee, and Bluefish Monitoring Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, July 22, 2003 beginning at 9 a.m. with the Summer Flounder Monitoring Committee followed by the Scup Monitoring Committee, then the Black Sea Bass Monitoring Committee and the Bluefish Monitoring Committee.

ADDRESSES: This meeting will be held at the Sheraton BWI, 7032 Elm Road, Baltimore, MD; telephone: 410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to recommend the 2004 commercial management measures, commercial quotas, and recreational harvest limits for summer flounder, scup, and black sea bass. The Bluefish Monitoring Committee will meet to recommend commercial management measures, recreational management measures, and a commercial quota and recreational harvest limit for bluefish for 2004.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 1, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–17243 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070103E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Scallop Oversight Committee in July, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between July 22–31, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Warwick, RI and Revere, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: *Tuesday, July 22, 2003 at 9 a.m.*–Scallop Oversight Committee Meeting.

Location: Crowne Plaza Hotel, 801 Greenwich Avenue, Warwick, RI 02886; telephone: (401) 732–6000.

The Scallop Committee will review written public comments on Draft Amendment 10 and develop recommendations for final alternatives. The Plan Development Team will also report on revised TAC estimates and associated trip/day-at-sea allocations under various potential preferred and non-preferred alternatives. The committee will also consider strategies in Amendment 10 for initial 2004 alternatives without area rotation and controlled area access in effect. Other alternatives and issues related to Amendment 10 and scallop management may be discussed.

Thursday, July 31, 2003 at 9 a.m.–Scallop Oversight Committee Meeting.

Location: Four Points by Sheraton Hotel, 407 Squire Road, Revere, MA 02151; telephone: (781) 284–7200.

As a follow-up to the meeting on July 22, the Scallop Committee will finalize its recommendations for the Amendment 10 proposed action. Other alternatives and issues related to Amendment 10 and scallop management may be discussed and recommendations of the Committee will be presented at the Council meeting on August 14 in Peabody, MA.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 1, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–17242 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060303E]

Marine Mammals; File No. 545–1488

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Craig Matkin, North Gulf Oceanic Society, 60920 Mary Allen Avenue, Homer, AK 99603, has been issued an amendment to scientific research Permit No. 545–1488–01.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On January 21, 2003, notice was published in the **Federal Register** (68 FR 2751) that an amendment of Permit No. 545–1488, issued May 7, 1999 (64 FR 24592), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit amendment adds the deployment of tags (short-term radio, satellite, acoustic recording, and underwater video tags) by close approach and biopsy sampling on the following species (except where noted in parantheses, additional annual takes beyond those already authorized under Permit No. 545–1488 include 150 photo-identification, 25 tagging and 30 biopsy sampling per species per year): killer whale (60 tagged and 64 biopsy sampled individuals per year), gray whale, harbor porpoise, Dall's porpoise, Pacific white-sided dolphin, Baird's beaked whale, Cuvier's beaked whale and Stejneger's beaked whales. The purpose of the amendment, as noted in the application, is to examine diving behavior, feeding, and movements of whales and to obtain information on elusive and rarely studied species.

Dated: July 2, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–17241 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070103C]

Marine Mammals; Photography Permit Application No. 997–1704

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction.

SUMMARY: Notice is hereby given that this corrects the document published on June 26, 2003, announcing that Bob McLaughlin, P.O. Box 496, 339 Glenwood, Eastsound, Washington 98245, had applied in due form for a permit to take several species of non-listed marine mammals for purposes of commercial/educational photography.

DATES: This action is effective July 9, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the offices listed in the original document published on June 26, 2003, as well as:

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The last sentence of the first paragraph under SUPPLEMENTARY INFORMATION in document 68 FR 38011 is revised to read as follows, ''However, in the meantime, NMFS has received and is processing this request as a ''pilot'' application for Level B Harrassment of non-listed marine mammals for photographic purposes.''

Dated: July 2, 2003.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–17244 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062703C]

Marine Mammals; File No. 984–1587

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Department of Biology, University of California at Santa Cruz, Santa Cruz, CA 95064 has been issued an amendment to scientific research Permit No. 984–1587–02.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 2, 2003, notice was published in the **Federal Register** (68 FR 16002) that an amendment of Permit No. 984–1587–02 had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit amendment authorizes temporary holding and research on an additional two female California sea lions (*Zalophus californianus*) and their progeny at Long Marine Laboratory. All procedures are performed voluntarily by the sea lions.

Dated: July 1, 2003.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–17379 Filed 7–8–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Performance Standards for a System To Reduce or Prevent Injuries From Contact With the Blade of a Table Saw (Petition No. CP 03–2)

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (CP 03–2) requesting that the Commission issue performance standards for a system to reduce or prevent injuries from contact with the blade of a table saw. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by September 8, 2003.

ADDRESSES: Comments on the petition, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov.* Comments should be captioned ''Petition CP 03–2, Petition for Performance Standards for Table Saws.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland. The petition is also available on the CPSC Web site at *http://www.cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from Messrs. Gass, Fanning, and Fulmer, *et al.*, requesting that the Commission issue a rule prescribing performance standards for a system to reduce or prevent injuries from contact with the blade of a table saw. The petitioners assert that a table saw not so equipped poses an increased risk of severe injuries including lacerations and amputations.

The petitioners maintain that a system to reduce or eliminate this risk must include the following: (1) A detection system capable of detecting contact or dangerous proximity between a person and the saw blade when the saw blade is—(a) spinning prior to cutting, (b) cutting natural wood with a moisture content of up to 50%, (c) cutting glued wood with a moisture content of up to 30%, and (d) spinning down after turning off the motor; (2) a reaction system to perform some action upon detection of such contact or dangerous proximity, such as stopping or retracting the blade, so that a person will be cut no deeper than ⅛ of an inch when contacting or approaching the blade at any point above the table and from any direction at a rate of one foot per second; (3) a self-diagnostic capability to verify the functionality of key components of the detection and reaction systems; and (4) an interlock system with the motor so that power cannot be applied to the motor if a fault interfering with the functionality of a key component in the detection or reaction system is detected.

The Commission is docketing the correspondence as a petition under provisions of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. The petition is available on the CPSC Web site at *http://www.cpsc.gov.* A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: July 2, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–17327 Filed 7–8–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board Closed Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: July 29–30, 2003 (8:30 a.m. to 5:00 p.m.).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. Carnegie, Program Manager/Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (703) 697–7898.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings and discuss several current critical intelligence issues in order to advise the Director, DIA.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–17258 Filed 7–8–03; 8:45 am]

BILLING CODE 5001–8–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Education Benefits Board of Actuaries; Meeting

AGENCY: DoD Education Benefits Board of Actuaries, DoD.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Department of Defense Education Benefits Fund. Persons desiring to: (1) Attend the DoD Education Benefits Board of Actuaries meeting, or (2) make an oral presentation or submit a written statement for consideration at the meeting, must notify Inger Pettygrove at (703) 696–7413 by July 24, 2003.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: September 5, 2003, 10 a.m. to 1 p.m.

ADDRESSES: 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, (703) 696–7413.

Dated: July 2, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 03–17259 Filed 7–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting Notice

AGENCY: DoD Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 74, Title 10, United States Code (10 U.S.C. 1464 *et seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to: (1) Attend the DoD Retirement Board of Actuaries meeting, or (2) make an oral presentation or submit a written statement for consideration at the meeting, must notify Inger Pettygrove at (703) 696–7413 by July 24, 2003.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: September 4, 2003, 1 p.m. to 5 p.m.

ADDRESSES: 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203, (703) 696–7413.

Dated: July 2, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 03–17257 Filed 7–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.310A]

Office of Innovation and Improvement; Parental Information and Resource Centers Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003; Correction.

On June 3, 2003, we published in the **Federal Register** (68 FR 33332) a notice inviting applications for new awards under the Parental Information and Resource Centers (PIRC) program. In that notice, we announced that each ''novice applicant'' would receive a competitive preference of 10 points. Upon further reflection, in order to encourage the submission of applications from novice applicants and to ensure that only the highest quality applications are funded, the Secretary is amending this competitive preference. The Secretary will award 10 additional points only to those novice applicants that rank among the ten highest scoring of all novice applicants on the basis of the selection criteria and the other competitive preference for this competition. In other words, only the ten highest ranked novice applicants, rather than all novice applicants, will be awarded priority points under the novice applicant preference.

The Secretary also reminds all applicants that section 5563(b) of the Elementary and Secondary Education Act (ESEA), as amended, requires each PIRC grantee to meet several specific conditions. The Secretary strongly encourages all applicants to review each of these conditions carefully to ensure that their applications appropriately address these specific requirements. For example, each applicant must (a) use at least 30 percent of the funds received under the program each year to establish, expand, or operate Parents as Teachers programs, Home Instruction for Preschool Youngsters programs, or other early childhood parent education programs; (b) use at least 50 percent of the funds received under the program each year to serve areas with high concentrations of low-income families, in order to serve parents who are severely educationally or economically disadvantaged; and (c) establish a special advisory committee as described in section 5563(b)(2) of the ESEA.

Consistent with section 5562(b) of the ESEA, in awarding funds under this competition, the Secretary will ensure, to the extent practicable, that grants are distributed in all geographic regions of the United States.

FOR FURTHER INFORMATION CONTACT: Patricia Kilby-Robb, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E209, FOB–6, Washington, DC 20202–6254. Telephone: (202) 205–4253 or via Internet: *patricia.kilby-robb@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative

format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF, you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7273 *et seq.*

Dated: July 3, 2003.

Nina S. Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03–17359 Filed 7–8–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A–3]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Correction

SUMMARY: On June 20, 2003, a notice inviting applications for new awards for the Centers for Independent Living program for FY 2003 was published in the **Federal Register** (68 FR 36977).

On page 36977, in column three, the ''Estimated Available Funds'' figure reads ''$1,871,862'' and the ''Estimated Average Size of Awards'' figure reads ''$103,992''. These figures, respectively, are corrected to read ''$1,935,902'' and ''$107,550''. In the table, for Indiana, the ''Estimated available funds'' figure reads ''$42,980''. This figure is corrected to read ''$107,020''.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132A–3.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U. S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: James Billy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Switzer Building, Washington, DC 20202–2740. Telephone: (202) 205–9362. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format on request to the program contact person listed in the preceding paragraph.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 796f–1.

Dated: July 2, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–17261 Filed 7–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.328R]

Office of Special Education and Rehabilitative Services

Special Education—Training and Information for Parents of Children With Disabilities Program—Technical Assistance for the Parent Centers (84.328R)

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services invites applications for FY 2003 under the Special Education—Training and Information for Parents of Children with Disabilities Program. This program is authorized under the Individuals with Disabilities Education Act (IDEA), as amended. This notice provides closing dates, priorities, and other information regarding the transmittal of applications.

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Eligible Applicants: Nonprofit private organizations.

Applications Available: July 9, 2003.

Deadline for Transmittal of Applications: August 8, 2003.

Deadline for Intergovernmental Review: September 7, 2003.

Estimated Available Funds:
Focus Area 1: $900,000.
Focus Area 2: $1,500,000.

Estimated Average Size and Maximum Award Amount:
Focus Area 1: $900,000.
Focus Area 2: $250,000.

Estimated Number of Awards:
Focus Area 1: 1.
Focus Area 2: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application submitted under this notice, the application narrative, is where you, the applicant, address the selection criteria

that reviewers use in evaluating your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

• A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Selection Criteria: In evaluating an application for a new award under this competition, we use selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition will be provided in the application package for this competition.

General Requirements

(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients under this competition must involve qualified individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

Priorities

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following absolute priority: *Absolute Priority—Technical Assistance for the Parent Centers* (84.328R)

Background: This priority, authorized under section 684 of IDEA, is for the purpose of developing, assisting, and coordinating parent training and information programs carried out by Parent Training and Information Centers (PTIs) under section 682 and the Community Parent Resource Centers (CPRCs) under section 683.

A technical assistance component to support the funded centers has been part of the law since the beginning of the program. This priority will create a unified technical assistance system that will provide support to the PTIs and CPRCs, as well as strengthen connections to the larger technical assistance network that supports research-based training, including educating parents about effective practices that improve results for children with disabilities. The priority will also strengthen partnerships among the PTIs, CPRCs, and State education systems at the regional and national levels.

Priority: This priority will support cooperative agreements in two focus areas: (1) A national technical assistance project, the National Parent Technical Assistance Center (National Parent TAC); and (2) six regional technical assistance centers, Regional Parent Technical Assistance Centers (Regional Parent TACs), which will coordinate with the National Parent TAC and provide direct support to the PTIs and CPRCs in their identified States based on the best empirical evidence of how to meet the informational and training needs of families who have children with disabilities.

Prior to developing any new product, whether paper or electronic, the projects funded under this priority must submit for approval a proposal describing the content and purpose of any new product to the document review board of the Office of Special Education Program's (OSEP) new Dissemination Center.

Focus Area 1

The National Parent TAC funded under this priority will assist six Regional Parent TACs in creating a unified technical assistance system for the PTIs and CPRCs funded under the IDEA.

The National Parent TAC must—

(a) Collaborate with other technical assistance providers and researchers in developing or adapting resource and training materials that incorporate scientifically based research and best practices for use by the PTIs and the CPRCs;

(b) Maintain and update a materials database that aligns with the OSEP Product Database and the Dissemination Center, which includes products developed under paragraph (a) and, to the extent possible, materials in multiple languages and accessible formats;

(c) In collaboration with OSEP, develop an evaluation instrument, which must be approved by OSEP, to be used by all the funded PTIs and CPRCs, that measures program effectiveness and outcomes for children;

(d) Establish a mechanism for data collection and reporting that corresponds to the outcomes established under paragraph (c) and corresponds to other information needs as determined through collaboration and coordination with the regional centers and OSEP;

(e) Maximize the computer and technological capacities of the PTIs and CPRCs by building on the system and network currently in place;

(f) Plan and conduct an annual national conference, in conjunction with the OSEP project officer and the six Regional Parent TACs, for all the funded parent centers in this program;

(g) Plan and conduct a New Directors' Conference in November of each year for all new directors of PTIs and CPRCs;

(h) Provide direct technical assistance to the Military and Native American National Centers funded under this program;

(i) Collaborate with other technical assistance providers, such as the Federal Resource Center (FRC), the Regional Resource Centers (RRCs), and the Dissemination Center, to use available resources, to access research-based practices and findings, and to participate in educational and system reform activities to improve results for children with disabilities;

(j) Coordinate and collaborate with the six Regional Parent TACs and OSEP to—

(1) Support the development of a unified parent training and information system that includes ways to improve results for children with disabilities;

(2) Coordinate special education technical assistance efforts across regions to benefit and enhance the PTIs and the CPRCs;

(3) Promote partnerships and collaborations with other entities involved in creating positive outcomes for children with disabilities;

(4) Conduct an assessment of the training and information needs of the PTIs and the CPRCs (including information on parent involvement and support for improved outcomes for students), in conjunction with the six Regional Parent TACs;

(5) Provide the six Regional Parent TACs with information on effective models for collaborative training that involves both parents and professionals who provide education and services to children with disabilities; and

(6) Provide technical assistance to the PTIs and the CPRCs to identify and implement effective strategies for working with families from underserved and underrepresented populations; and

(k) Coordinate and collaborate with the Regional Parent TACs, OSEP, the FRC, and RRCs to improve collaboration and coordination of effort among RRCs, PTIs, and CPRCs on the preparation of training materials that include scientifically based research and best practices and information on the No Child Left Behind Act of 2001 (NCLB).

Focus Area 2

The six Regional Parent TACs funded under this priority will coordinate with the National Parent TAC in order to promote a unified system for the provision of technical assistance to PTIs and CPRCs and to strengthen and enhance OSEP's Technical Assistance and Dissemination (TA&D) Network.

Each project must—

(a) Provide direct technical assistance to PTIs and CPRCs in its region;

(b) Provide direct technical assistance and disseminate information through a variety of mechanisms to individual parent centers on management processes or content areas (*e.g.*, NCLB, special education and related services issues, system reform, laws and regulations, alternative dispute resolution, and networking), as identified through a needs assessment;

(c) Provide direct technical assistance to each PTI and CPRC in its region on outreach efforts to underserved and underrepresented populations;

(d) Collaborate with other technical assistance providers, such as the FRC, RRCs, and the Dissemination Center, to use available resources, to access research-based practices and findings, and to participate in educational and system reform activities;

(e) Collaborate with the National Parent TAC, the FRC, and RRCs to improve collaboration and coordination of efforts among RRCs, PTIs, and CPRCs on the preparation of training materials that include scientifically based research and best practices and information on the NCLB; and

(f) Coordinate and collaborate with the National Parent TAC to—

(1) Conduct an assessment of the training and information needs of the PTIs and CPRCs;

(2) Provide direct technical assistance to each parent center to assist them in measuring program effectiveness and outcomes for children and to make changes as needed;

(3) Maximize the computer and technological capabilities of the PTIs and CPRCs by identifying training needs and providing access to training, supporting a national database of training materials in multiple languages and accessible formats, supporting an electronic linkage across all the funded centers using a Web page and bulletin boards that are user friendly, and implementing other appropriate strategies; and

(4) Participate in planning the national conference each year and conduct one regional conference each year.

Geographic Regions

There will be one award in each of the regions identified as follows:

Region 1 Parent TAC: CT, ME, MA, NH, NJ, NY, RI, VT.

Region 2 Parent TAC: DE, KY, MD, NC, SC, TN, VA, DC, WV.

Region 3 Parent TAC: AL, AR, FL, GA, LA, MS, OK, Puerto Rico, TX, U.S. Virgin Islands.

Region 4 Parent TAC: IL, IN, IA, MI, MN, MO, OH, PA, WI.

Region 5 Parent TAC: AZ, CO, KS, MT, NE, ND, NM, SD, UT, WY.

Region 6 Parent TAC: AK, CA, HI, ID, NV, OR, WA, the outlying areas of the Pacific Basin, and the Freely Associated States.

Competitive Preference Priorities: Within the absolute priority, we will award additional points under the following competitive preference priority under 34 CFR 75.105(c)(2)(i) to applicant organizations that are otherwise eligible for funding under the absolute priority:

We will award 10 points to applicants that are organizations that meet the following definition:

Parent organizations, as defined in section 682(g) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that—

(a) Has a board of directors, (1) the parent and professional members of which are broadly representative of the population to be served, (2) the majority of whom are parents of children with disabilities, and (3) that includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; or

(b) Has a membership that represents the interests of individuals with disabilities and has established a special governing committee meeting the requirements for a board of directors in paragraph (a) and has a memorandum of understanding between this special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

Any parent organization that establishes a special governing committee under section 682(g)(2) of IDEA must demonstrate that the bylaws of its organization allow the governing committee to be responsible for operating the project (consistent with existing fiscal policies of its organization).

In addition, we will award additional points under the following competitive preference priority under 34 CFR 75.105(c)(2)(i) to applicant organizations that are otherwise eligible for funding under the absolute priority:

We will award 10 points under Focus 2 of the absolute priority to applicants who are located in the region they are proposing to serve.

Therefore, for the purposes of these competitive preference priorities, applicants under Focus 1 can be awarded a total of 10 points in addition to those awarded under the published selection criteria for this program. That is, an applicant meeting the first competitive preference could earn a maximum total of 110 points.

Applicants under Focus 2 can be awarded a total of 10 points in addition to those awarded under the published selection criteria for this program. That is, an applicant meeting the second competitive preference could earn a maximum total of 110 points. An applicant meeting both competitive preferences could earn a maximum total of 120 points.

Waiver of Proposed Rulemaking: It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive

policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Training and Information for Parents of Children with Disabilities Program—CFDA #84.328R is one of the programs included in the pilot project. If you are an applicant under the Special Education—Training and Information for Parents of Children with Disabilities Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Special Education—Training and Information for Parents of Children with Disabilities Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Training and Information for Parents of Children with Disabilities Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: 1–301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.328R.

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document or a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

The program in this notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *www.ed.gov/legislation/FedRegister.*

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Program Authority: 20 U.S.C. 1484.

Dated: July 3, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–17360 Filed 7–8–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–529–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 1, 2003.

Take notice that on June 25, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective July 25, 2003:

Second Revised Sheet No. 182
Third Revised Sheet No. 186

ANR states that it seeks approval of (1) an assignment of its Gas Purchase Agreement (GPA) with Dakota Gasification Company, as well as related transportation capacity, to BP Canada Energy Marketing Corp. (BP) and (2) the above-referenced tariff sheets to implement recovery of the costs relating to such assignment. Subject to Commission approval, ANR states that it has agreed to assign to BP its obligations under the GPA, and permanently release to BP two transportation contracts with Northern Natural Gas Company and Northern Border Pipeline Company, respectively. ANR explains that assuming that the Assignment Agreement is effectuated on August 1, 2003, the parties have agreed to a buyout cost of approximately $9.5 million. To recover the buyout costs, ANR proposes to revise its existing tariff to include a mechanism that provides for a twelve month recovery period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: July 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17297 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–52–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

July 1, 2003.

Take notice that on June 26, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets bearing a proposed effective date of July 28, 2003:

Tenth Revised Sheet No. 228
Third Revised Sheet No. 228A
Third Revised Sheet No. 228B
Third Revised Sheet No. 228C

CIG states that these tariff sheets implement the pro forma tariff provisions accepted by the Commission in CIG's Fort Morgan storage proceeding at Docket No. CP03–52–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17288 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–2233–000]

GWF Energy LLC; Notice of Issuance of Order

July 1, 2003.

GWF Energy LLC (GWF) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of electric energy, capacity, and ancillary services at market-based rates. GWF also requested waiver of various Commission regulations. In particular, GWF requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by GWF.

On July 18, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by GWF should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 10, 2003.

Absent a request to be heard in opposition by the deadline above, GWF is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or

assumption is for some lawful object within the corporate purposes of GWF, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of GWF's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17289 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–396–001]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

July 1, 2003.

Take notice that on June 26, 2003, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, certain tariff sheets, to be effective July 1, 2003.

Horizon states that the purpose of this filing is to comply with the Commission's Letter Order issued June 18, 2003, in Docket No. RP03–396–000 (Order). The Order accepted, subject to specified modifications, tariff sheets filed by Horizon in compliance with Order No. 587–R, issued on March 12, 2003, in Docket No. RM96–1–24 (Order 587–R). Horizon's original Order 587–R compliance filing was made on May 1, 2003. No tariff changes other than those required by the Order are reflected in this filing.

Horizon states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. P03–396–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17294 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–162–001]

Northern Natural Gas Company; Notice of Compliance Filing

July 1, 2003.

Take notice that on June 27, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheet proposed to be effective on June 16, 2003:

Fifth Revised Volume No. 1
Ninth Revised Sheet No. 6
Original Volume No. 2
Revised Sheet No. 1A.1
Second Revised Sheet No. 200

Northern states that the above referenced sheets represent cancellation of Rate Schedule T–4 from Northern's Original Volume No. 2 FERC Gas Tariff, and the associated deletions from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17287 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–436–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

July 1, 2003.

Take notice that on June 26, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective July 1, 2003:

Substitute Fifth Revised Sheet No. 202–A
Substitute Third Revised Sheet No. 232–E
Substitute Second Revised Sheet No. 237–D
Substitute Third Revised Sheet No. 258–C
Substitute First Revised Sheet No. 265–D
Substitute Sixth Revised Sheet No. 268

Northwest states that the purpose of this filing is to comply with the Commission's letter order dated June 20, 2003 in this docket by filing minor revisions to tariff sheets filed on May 1,

2003 in compliance with Order No. 587–R. Northwest states that the revisions generally add references to Version 1.6 and Recommendations R02002 and R02002–2 to certain tariff provisions.

Northwest states that a copy of this filing has been served upon each person designated on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17295 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–35–005]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

July 1, 2003.

Take notice that on June 24, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of February 16, 2003.

Tennessee states that the revised tariff sheets are being filed in accordance with the Commission's June 4, 2003 order in the referenced proceeding, which relates to Tennessee's previous filings to revise certain of its tariff provisions that primarily deal with the demonstration and maintenance of creditworthiness by Tennessee's customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17290 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–016]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

July 1, 2003.

Take notice that on June 20, 2003, Transcontinental Gas Pipe Line Corporation (Transco) filed to amend the service agreement with Washington Gas Light Company (WGL). Transco states that it previously requested, in Docket No. RP96–359–016, that a negotiated delivery point facilities surcharge become effective June 1, 2003. Transco states in its June 20, 2003 letter, that due to construction delays, the in-service date of the Westmore Road Meter Stations, a delivery point to WGL, is now expected to occur on or about June 24, 2003. Therefore, Transco requests that the service agreement with WGL become effective July 1, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17298 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–481–001]

Transwestern Pipeline Company; Notice of Compliance Filing

July 1, 2003.

Take notice that on June 26, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 5C, to become effective May 1, 2003.

Transwestern states that Transwestern and Unocal Keystone Gas Storage, LLC (Unocal) entered into an Operator Balancing Agreement (Unocal OBA) that contained several provisions that were supplemental to the form of operator balancing agreement (OBA) set forth in Transwestern's tariff. Transwestern states that on May 23, 2003, in

accordance with Section 15.5 of the General Terms and Conditions of Transwestern's tariff, Transwestern filed with the Commission those supplemental provisions. On June 17, 2003, the Commission issued an Order Accepting Operational Balancing Agreement Subject to Condition (Order). The Order directed Transwestern to file within 10 days of the Order date a tariff sheet listing the Unocal OBA as non-conforming. Transwestern states that the instant filing adds the Unocal OBA to the non-conforming service agreements list contained in the Transwestern tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17296 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–375–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 1 , 2003.

Take notice that on June 26, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), submitted its filing in compliance with the Commission's Letter Order issued June 20, 2003 in Docket No. RP03–375–000.

Williston Basin states that the instant filing complies with the Commission's Letter Order by removing NAESB Standard 4.3.4 from Subsection 47.2 of its FERC Gas Tariff, Second Revised Volume No. 1 as directed by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17293 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

July 1, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No.:* 11512–002.

c. *Date Filed:* November 25, 2002.

d. *Licensee:* John H. Bigelow.

e. *Name of Project:* McKenzie Hydroelectric Project.

f. *Location:* On the McKenzie River, in Lane County, Oregon.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Licensee Contact:* John H. Bigelow II, P. O. Box 376, Blue River, Oregon 97413, (541) 822–3137.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing motions to intervene, protests, comments:* July 31, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Proposed Action*: An application for the surrender of license has been filed for the McKenzie Hydroelectric Project. No construction has occurred at the project site.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'',''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

Any of the above-named documents must be filed by providing the original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and motions to intervene may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17291 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Prepare an Environmental Assessment and Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

July 1, 2003.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 382–026.

c. *Date filed:* February 26, 2003.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Borel Hydroelectric Project.

f. *Location:* On the Kern River near the town of Bodfish, Kern County, California. The canal intake for the project is located on approximately 188 acres of Sequoia National Forest Service lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.§§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Nino J. Mascolo, Senior Attorney, Southern California Edison Co., 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770.

i. *FERC Contact:* Allison Arnold at (202)502–6346 or *allison.arnold@ferc.gov.*

j. *Deadline for filing scoping comments:* September 5, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Borel Hydroelectric Project (Project) consists of: (1) A 158-foot long, 4-foot-high concrete diversion dam with fishway; (2) a 61-foot-long intake structure with three 10-by 10-foot radial gates; (3) a canal inlet structure consisting of a canal intake, trash racks, and a sluice gate; (4) a flowline with a combined total length of 1,985-feet of tunnel, 1,651-feet of steel Lennon flume, 3,683-feet of steel siphon, and 51,835-feet of concrete-lined canal; (5) four steel penstock, penstocks 1 and 2 are 526-feet-long and 565-feet-long, respectively with varying diameters between 42 and 60 inches, penstocks 3 and 4 each have a 60-inch-diameter and extend 622-feet at which point they wye together to form a single 84-inch-diameter, 94-foot-long penstock; (6) a powerhouse with two 3,000 kW generators and a 6,000kW generator for a total installed capacity of 12,000 kW or 12 MW; and (7) other appurtenant facilities. The Project has no storage capability and relies on water releases from Lake Isabella made by the U.S. Army Corp of Engineers.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Scoping Process

The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one evening meeting and one daytime scoping meeting. The evening scoping meeting is primarily for public input, while the daytime scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Wednesday, August 6, 2003.

Time: 6:30 p.m.

Place: Woodrow Wallace Elementary School.

Address: 3240 Erskine Creek Road, Lake Isabella, CA.

Daytime Scoping Meeting

Date: Thursday, August 7, 2003.

Time: 10 a.m.

Place: U.S. Forest Service, Cannell Meadow District Office.

Address: 105 Whitney Road, Kernville, CA 93238.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA are being distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at *http://www.ferc.gov* using the ''FERRIS'' link (*see* item m above).

Site Visit

Due to the logistics involved in traveling to some project locations, there is a need to know the number of

attendees in advance. All individuals planning to attend need to call Allison Arnold, FERC Project Coordinator, at (202) 502–6346, no later than Thursday, July 31, 2003.

FERC staff and the Applicants will conduct a one-day project site visit on August 6, 2003, beginning at 1 p.m.. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the Woodrow Wallace Elementary School located at 3240 Erskine Creek Road, Lake Isabella, CA by 1 p.m. on August 6, 2003 for the site visit. All participants are responsible for their own transportation, although we will try to carpool.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17292 Filed 7–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 2, 2003.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 9, 2003 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400, for a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

834TH—Meeting July 9, 2003; Regular Meeting 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters
A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations
A–3.
Docket#, Summer Energy Market Assessment Report

Markets, Tariffs and Rates—Electric

E–1.
Docket# EL03–116, 000, Reliant Energy Mid-Atlantic Power Holdings, LLC v. PJM Interconnection, L.L.C.
E–2.
Omitted
E–3.
Docket# ER03–851, 000, Entergy Services, Inc
E–4.
Docket# ER03–849, 000, ISO New England Inc.
E–5.
Docket# ER03–713, 000, Southern Power Company
Other#s ER03–713, 001, Southern Power Company
E–6.
Docket# ER03–48, 000, Tampa Electric Company
E–7.
Docket# ER02–199, 000, Mississippi Power Company
Other#s EL02–50, 000, Southern Company Services, Inc.
ER02–218, 000, Southern Company Services, Inc.
ER02–219, 000, Southern Company Services, Inc.
ER02–220, 000, Southern Company Services, Inc.
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ER02–224, 000, Southern Company Services, Inc.
ER02–225, 000, Southern Company Services, Inc.
ER02–226, 000, Southern Company Services, Inc.
ER02–227, 000, Georgia Power Company
ER02–228, 000, Georgia Power Company
ER02–229, 000, Alabama Power Company
ER02–230, 000, Alabama Power Company
ER02–498, 000, Gulf Power Company
ER02–788, 000, Gulf Power Company
E–8.
Docket# ER02–994, 003, Duke Energy Corporation
E–9.
Docket# ER03–347, 000, Arizona Public Service Company
E–10.
Docket# ER02–2170, 000, Aquila, Inc.
Other#s ER02–2170, 001, Aquila, Inc.
E–11.
Docket# ER02–871, 000, Midwest Independent Transmission System Operator, Inc.
E–12.
Docket# ER03–843, 000, Entergy Services Inc.
Other#s EL03–124, 000, Southwestern Power Administration (United States Department of Energy)
E–13.
Omitted
E–14.
Omitted
E–15.
Docket# EL03–118, 001, Wilbur Power LLC
Other#s QF83–168, 006, Crown Zellerbach Corporation, *et al.*
E–16.
Docket# ER00–2019, 001, California Independent System Operator Corporation
E–17.
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Magalie R. Salas,

Secretary.

[FR Doc. 03–17534 Filed 7–7–03; 3:52 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 2, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 9, 2003. (Within a relatively short time before or after the regular Commission Meeting).

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on July 9, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17535 Filed 7–7–03; 3:52 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL01–118–000 and EL01–118–001]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell—Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations; Order Seeking Comments on Proposed Revisions to Market-Based Rate Tariffs and Authorizations

Issued: June 26, 2003.

1. In an order dated November 20, 2001, the Commission, acting pursuant to Section 206 of the Federal Power Act (FPA),[1] proposed to condition all new and existing market-based rate tariffs and authorizations to include a provision prohibiting the seller from engaging in anticompetitive behavior or the exercise of market power.[2] This market behavior standard, we indicated, was intended to establish a clear benchmark governing market

[1] 16 U.S.C. 824e (2000).

[2] 97 FERC ¶ 61,220 (2001) (November 20 Order).

participant conduct, with the penalties for violations clearly spelled out.

2. Commenters in this proceeding argued that the Commission's proposed tariff provision was overly-proscriptive or vague and would, if implemented, create uncertainty in the marketplace. Others argued that the tariff provision did not go far enough in protecting against the unjust and unreasonable rates that may result from anticompetitive behavior or the exercise of market power. To address these concerns, Commission Staff convened a public conference in this proceeding to determine whether, and how, the tariff provision proposed in the November 20 Order could, or should, be modified.

3. In the meantime, in conjunction with its investigation of the Western energy markets, in Docket No. PA02–2–000, Commission Staff issued its Final Report on Price Manipulation in Western Markets (Western Markets Report).[3] Among other things, Staff recommended that the Commission condition all electric market-based rate tariffs and authorizations (and all natural gas blanket marketing certificates) to prohibit a number of specifically-enumerated transactions and market behaviors. Staff also recommended that the Commission provide for the imposition of penalties for violations of these market behavior rules.

4. Since our November 20 Order, the Commission has been informed not only by the comments received from the public in this proceeding, but also by what we have learned about the types of behavior that occurred in the Western markets during 2000 and 2001. We also have gained additional experience in other competitive markets, particularly those with organized spot markets in the East.

5. As part of our ongoing responsibility to provide regulatory safeguards to ensure that customers are protected from potential market abuses, we believe it is important to take steps within our statutory authority that balance three goals: first, the need to provide for effective remedies on behalf of customers in the event anticompetitive behavior or other market abuses occur; second, the need to provide clearly-delineated ''rules of the road'' to market-based rate sellers while, at the same time, not impairing the Commission's ability to provide remedies for market abuses whose precise form and nature cannot be envisioned today; and third, the need to provide reasonable bounds within which conditions on market conduct will be implemented, so as not to create unlimited regulatory uncertainty for individual market participants or harm to the marketplace in general. A stable marketplace with clearly defined rules benefits both customers and market participants and creates an environment that will attract much-needed capital.

6. Based on these three objectives, we propose to modify the tariff provision set forth in the November 20 Order by identifying more precisely and comprehensively than we did in the November 20 Order the transactions and practices that would be prohibited under sellers' market-based rate tariffs and authorizations. We propose six specific rules relating to: (1) Unit operation; (2) market manipulation; (3) communications; (4) reporting; (5) record retention; and (6) related tariffs.[4] Should a seller be found to have engaged in the transactions or behavior prohibited under our proposed market behavior rules, it would be subject to disgorgement of unjust profits obtained in contravention of the seller's tariff, and appropriate non-monetary remedies such as revocation of seller's market-based rate authority and revisions to seller's code of conduct. We seek comments on these proposed market behavior rules and related matters, as discussed below.[5]

7. The balance struck in formulating these proposed market behavior rules has presented a difficult task. We have been required to make judgments, for example, which necessarily include trade-offs—between broad and unlimited rights of parties to allege violations and obtain financial remedies, on the one hand, while at the same time providing transaction finality to sellers and the market in general. While our proposal represents our best judgment of the proper balance between these competing interests, we hope and expect that, in addition to the specifics of our proposal, commenters will fully address whether we have achieved the appropriate balance.

8. We also note that the market behavior rules we are proposing would apply to any market-based sale, whether in the bilateral market or in an organized market, *i.e.*, in the markets administered by a regional transmission organization (RTO) or by an independent system operator (ISO). These market behavior rules would be intended to complement any RTO or ISO tariff conditions and market rules that may apply to sellers in these markets.

Background

The November 20 Order

9. In the November 20 Order, we instituted a proceeding pursuant to Section 206 of the FPA, in which we proposed to condition our grant of market-based rate authority to public utilities that sell electric energy and ancillary services at wholesale in interstate commerce, by expressly prohibiting sellers from engaging in anticompetitive behavior or abuses of market power.[6] We found that the implementation of this market behavior standard was made necessary, in part, by the lessons learned from the California energy crisis and our on-going investigation of that market in the California Refund Proceeding.[7]

10. In a series of orders issued in the California Refund Proceeding, we had determined, prior to our issuance of the November 20 Order, that the electric market structure and market rules for wholesale sales of electric energy in California were seriously flawed, and that these market flaws had created an environment ripe for anticompetitive conduct and the abuse of market power. We noted in the November 20 Order that as a response, we had, among other things, established market behavior conditions applicable to the Western markets, including refund liability, on sellers' market-based rate authority to

[3] Final Report on Price Manipulation in Western Markets: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02–2–000 (March 2003). The Western Markets Report is available on the Commission's Web site.

[4] In a Notice of Proposed Rulemaking being issued today, in Docket No. RM03–10–000, we are also proposing, consistent with the recommendations made by Staff in the Western Markets Report, to modify natural gas market blanket certificates under subpart G of part 284 of the Commission's regulations, to contain many of the standards proposed herein, where applicable.

[5] Because the proposals made herein would have the effect of revising sellers' market-based rate tariffs, and thus would not constitute an amendment to the Commission's regulations, we are proposing to proceed in this forum rather than in a rulemaking proceeding governed by the Administrative Procedures Act, 5 U.S.C. 553 (2000). However, in doing so, we are mindful of the generic effect that our proposal will have on the industry as a whole, and the importance of seeking full public input regarding our proposal. In this regard, we seek comments from all interested entities on a broad range of issues, as discussed below, and are directing that this order be published in the **Federal Register**.

[6] The November 20 Order proposed to include the following provision in all market-based rate tariffs and authorizations: ''As a condition of obtaining and retaining market-based rate authority, the seller is prohibited from engaging in anticompetitive behavior or the exercise of market power. The seller's market-based rate authority is subject to refunds or other remedies as may be appropriate to address any anticompetitive behavior or exercise of market power.'' *See* November 20 Order, 97 FERC at 61,976.

[7] *See, e.g., San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Service, et al.*, 97 FERC ¶ 61,275 (2001).

prevent anticompetitive bidding behavior.[8]

11. In the November 20 Order, however, we also noted that this potential for market manipulation was not limited to the California market.[9] In fact, the potential for market abuse and the exercise of market power may exist in any region where the evolution towards a competitive market is not yet complete; or where the design structure of the market is otherwise ill-equipped to promote competition; or where the supply/demand imbalance causes the market to be in disequilibrium.[10] In the November 20 Order, therefore, we proposed to apply to all public utilities authorized to sell energy and ancillary services at market-based rates, the same conditions we had applied to market-based rate sellers in the western markets.

Hearing Procedures and Responsive Pleadings

12. The November 20 Order established paper hearing procedures to address the Commission's proposed tariff provision, with interested entities invited to file comments and reply comments. Numerous responsive pleadings were filed. In addition, a public conference was convened in this proceeding on March 11, 2002, to discuss issues raised in the comments and reply comments. Comments on the technical conference were filed on March 22, 2002.

Staff's Investigation of Market Manipulation in the Western Markets

13. Commission Staff addressed a broad range of market power issues and the need for market behavior rules, in its investigation of the Western energy markets, in Docket No. PA02–2–000.[11] In Staff's Initial Report, issued in August 2002, Staff made a number of findings regarding, among other things, the possible misconduct by Enron Corporation (Enron) and its affiliates, and the use, by Enron and its affiliates, of the so-called Enron trading strategies.[12] These trading strategies, Staff found, included efforts to game the market in ways that were either fraudulent or otherwise anticompetitive. Moreover, Staff found that similar trading strategies were being utilized by a broad cross-section of the industry.

14. Subsequently, in the Western Markets Report, Staff recommended that the Commission condition all electric market-based rate tariffs and authorizations and all natural gas blanket marketing certificates on specific market behavior rules.[13] Staff proposed that market-based rate sellers be required by their tariffs to: (1) Provide complete, accurate, and honest information to any entity that publishes price indices; (2) retain all relevant data and information needed to reconstruct a published price index for a period of 3 years; (3) explicitly prohibit the use of false information as a condition for granting all market-based rate authorizations; (4) require that data sent to firms publishing price indices be provided by the risk management office of the company, not the trading desk or a trader, and be certified by the chief risk officer; (5) ban any form of prearranged wash trading and prohibit the reporting of any affiliate trading activities through industry indices; (6) require that sellers who use trading platforms use only those trading platforms that agree to provide the Commission with full access to trade reporting and order book information for the trading systems and agree to adhere to appropriate monitoring requirements; and (7) prohibit the submission of false information or the omission of material information to the Commission or to an entity such as an independent system operator, a regional transmission organization, or an approved market monitor.

Discussion

Procedural Issues

15. A number of entities request rehearing of the November 20 Order. However, rehearing may not be sought in this case until the Commission issues a final decision or other final order.[14] Because the November 20 Order initiated an investigation and thus was not a final order, we will not consider requests for rehearing of the November 20 Order. However, we will treat these requests as comments to the degree they are relevant to our current proposal.

Proposed Tariff Revisions

16. Consistent with the findings and recommendations of the Western Markets Report and the comments filed in this proceeding, we propose new market behavior rules applicable to all market-based rate tariffs and authorizations. As set forth in the Attachment to this order, these market behavior rules would prohibit market manipulation and more clearly outline sellers' responsibilities and duties with respect to communications to regulatory authorities and market operators. Should a seller be found to have engaged in the transactions or behavior prohibited under our proposed market behavior rules, it would be subject to disgorgement of unjust profits obtained in contravention of the seller's tariff, and appropriate non-monetary remedies such as revocation of seller's market-based rate authority and revisions to seller's code of conduct.

17. As noted above, in proposing these market behavior rules we have attempted to strike a careful balance. On the one hand, it is essential, for all the reasons outlined in the November 20 Order and in the Western Markets Report, that our market behavior rules be clear and enforceable. Market conduct which is anticompetitive or which constitutes an abuse of market power must be prohibited and made subject to remedial action under the circumstances outlined herein. On the other hand, transactions and practices which are consistent with the normal operation of supply, demand, and true scarcity, or which otherwise have a legitimate business purpose, should neither be discouraged nor impeded. Further, while our proposal is designed to give the Commission and interested parties an enhanced ability to undertake effective enforcement and to require appropriate remedies, we understand that market participants need some level of certainty, that is, they need to know that they will not be exposed to open-ended uncertainty. Our proposal attempts to balance these two valid concerns by proposing appropriately-tailored complaint procedures and by

[8] November 20 Order, 97 FERC at 61,975, *citing San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Service, et al.*, 95 FERC ¶ 61,115, *order on reh'g*, 95 FERC ¶ 61,418 (2001).

[9] *Id.* at 61,975–76.

[10] In addition, sellers may have the opportunity to exercise market power even in markets which are typically (and on most occasions) competitive. For example, extreme supply or demand conditions to which the market cannot quickly adapt, such as the loss of significant hydropower capacity because of drought, or force majeure events such as a major transmission line outage could provide opportunities to exercise market power even in a market that is normally workably competitive.

[11] Staff's investigation was initiated pursuant to our February 13, 2002 order in Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC ¶ 61,165 (2002).

[12] *See* Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02–2–000 (August 2002).

[13] The Final Report also recommended that several entities participating in the California market (including Enron) be required to show cause why their authority to sell power at market-based rates should not be revoked by the Commission in light of their apparent involvement in market manipulation and gaming activities. Orders directed to these issues were subsequently issued by the Commission on March 26, 2003. *See* Enron Power Marketing, Inc., *et al.*, 102 FERC ¶ 61,316 (2003); Reliant Energy Services, Inc., *et al.*, 102 FERC ¶ 61,315 (2003).

[14] *See* Rule 713 of the Commission's Rules of Practice and Procedure, 18 CFR 385.713 (2003).

providing clarity regarding sellers' potential liability.[15]

Market Behavior Rule # 1: Unit Operation

Seller will operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the rules and regulations of the applicable power market.

18. The integrity of an organized market operated by an RTO or ISO and the integrity of other markets as well, depends in part upon generators and other sellers fully and accurately providing all information to market operators and complying with market rules, particularly those relating to bidding. In Market Behavior Rule # 1, therefore, the Commission proposes to require that Sellers operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the rules and regulations of the applicable power market. This requirement contemplates that sellers will follow these rules and regulations by providing complete and honest information, as may be required.[16] Market Behavior Rule # 1 is consistent with our view that *ex ante* rules are superior to *ex post* regulatoryaction.

19. While we understand that market participants may become subject to additional requirements through tariff service agreements and other market participation agreements, we believe that a specific requirement in each seller's market-based rate tariff addressing unit operation issues is necessary in order to give the Commission and interested parties direct remedial authority for violations that may not exist without such a condition. We request comment on the inclusion of this condition in market-based tariffs.

Market Behavior Rule # 2: Market Manipulation

Actions or transactions without a legitimate business purpose which manipulate or attempt to manipulate market prices, market conditions, or market rules for electric energy, or result in market prices for electric energy and/or electric energy products which do not reflect the legitimate forces of supply and demand, are prohibited. Prohibited actions and transactions include, but are not limited to: (A) Pre-arranged offsetting trades of the same product among the same parties, which trades involve no economic risk, and no net change in beneficial ownership (sometimes called ''wash trades''); (B) transactions predicated on submitting false information to transmission providers or other entities responsible for operation of the transmission grid (such as inaccurate load or generation data; scheduling non-firm service or products sold as firm; or conducting ''paper trades'' where an entity falsely designates resources and fails to have those resources available and feasibly functioning); (C) transactions in which an entity first creates artificial congestion and then ''relieves'' such artificial congestion; (D) collusion with another party for the purpose of creating market prices at levels differing from those set by market forces; and (E) bidding the output of or misrepresenting the operational capabilities of generation facilities in a manner which raises market prices by withholding available supply from the market.

20. Our reliance upon competitive markets to establish just and reasonable rates requires that we have the tools necessary to ensure that prices created in these markets continue to fall within a just and reasonable zone. The tools we have relied upon include non-discriminatory transmission access, an efficient and pro-competitive wholesale market platform, and effective market monitoring and enforcement.

21. In formulating the conditions to be added to public utility sellers' tariffs, the Commission is fulfilling its obligation to appropriately monitor markets and is thus taking steps to ensure that market-based rates remain within the zone of reasonableness required by the FPA. In a market-based rate regime, this means that public utility sellers will not be permitted to exercise market power or take anti-competitive actions that may increase market prices and that the Commission will take appropriate remedial steps. Such steps may include market rules designed to prevent exercises of market power as well as conditions placed on market-based rate authorizations to prohibit conduct that adversely affects competitive market outcomes.[17]

22. Accordingly, we propose in Market Behavior Rule # 2 to prohibit activities that adversely affect competitive outcomes, that is, that result in rates that do not reflect legitimate market forces. Such rates would fall outside the zone of reasonableness.[18] In making this proposal, we note that just and reasonable rates created through competitive markets is our goal. We believe that by providing further clarity concerning prohibited actions and transactions, and by undertaking judicious enforcement of these standards, we will help to enhance confidence in, and the integrity of, our jurisdictional markets for both customers and market participants.

23. In crafting Market Behavior Rule # 2, we have also attempted to provide specificity by including a non-exclusive list of prohibited activities that illustrates the types of activities that adversely affect competitive market outcomes. However, we have also included a generic standard which will allow us to take remedial action if we discover additional activities of a seller taken in contravention of our market behavior rules affecting the justness and reasonableness of rates. In the event that Staff, or a third party in a timely complaint, demonstrates that a transaction or behavior not expressly prohibited in our market behavior rules appears to be in violation of this rule (*i.e.*, that a given transaction or behavior is causing prices to reflect outcomes not reflective of market forces), we will require the identified seller to show cause why it should not be required to disgorge unjust profits obtained through such transaction or behavior, or and be subject to appropriate non-monetary remedies. In evaluating responses to such show cause orders, we will take into account such matters as whether the seller can establish a legitimate business purpose consistent with prices set by market forces relative to its conduct.[19]

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[15] *See supra* PP. 37–42 (complaint procedures and scope of liability).

[16] We note that EPSA, in its code of ethics and sound trading practices, has developed a standard which includes elements of Market Behavior Rule # 1.

[17] The Court of Appeals for the DC Circuit has held that, while the Commission ''enjoys substantial discretion in ratemaking determinations * * * by the same token, this discretion must be bridled in accordance with the statutory mandate that the resulting rates be 'just and reasonable.''' *Farmers Union Cent. Exch. Inc.* v. *FERC*, 747 F.2d 1486 at 1501 (D.C. Cir. 1984). In addition, the regulatory regime itself must contain some form of monitoring to ensure that rates remain within a zone of reasonableness and to check rates that depart from this zone. *Id.* at 1509. *See also Louisiana Energy and Power Authority* v. *FERC*, 141 F.3d 364 (D.C. Cir. 1998); *Elizabethtown Gas Co.* v. *FERC*, 10 F.3d 866 (D.C. Cir. 1993).

[18] In prohibiting transactions such as those involving false congestion, the Commission does not intend to prohibit transactions taken consistent with market rules in ISO or RTO markets such as virtual bidding or day ahead markets where ''simulated'' congestion may be reflected in pricing as part of market design.

[19] The Commission considers a legitimate business purpose to be an action consistent with behavior in a competitive market which is taken to further a firm's business objectives without engaging in manipulative, illegal, or otherwise

Continued

24. Our market behavior rules would not supersede or replace parties' rights under Section 206 of the FPA to file a complaint contending that a contract should be revised by the Commission (pursuant to either the ''just and reasonable'' or ''public interest'' test as required by the contract). Rather, any party seeking contract reformation or abrogation based on a violation of one or more of the market behavior rules would be required to demonstrate that such a violation had a direct nexus to contract formation and tainted contract formation itself. If a jurisdictional seller enters into a contract without engaging in behavior that violates its tariff with respect to the formation of such contract, we do not intend to entertain contract abrogation complaints predicated on our market behavior rules.

25. Finally, in undertaking our enforcement decisions, we will focus on the best outcome for assuring just and reasonable rates in our jurisdictional markets. In some instances, significant remedial action may be warranted. In other instances, we may use a specific set of facts and circumstances to clarify our requirements for acceptable public utility activities. As such, it is our expectation that through this proposed tariff revision, we will appropriately balance our need to remedy anticompetitive behavior with the legitimate needs of market participants for clear rules. We seek comment on these issues and any other issues of concern relating to Market Behavior Rule # 2.

Market Behavior Rule # 3: Communications

Seller will provide complete, accurate, and factual information, and not submit false or misleading information, or omit material information, in any communications with the Commission, market monitors, regional transmission organizations, independent system operators, or similar entities.

26. In the Western Markets Report, Staff proposes that all market-based rate tariffs include a specific prohibition against the submission of false information or the omission of material information to the Commission or to an entity such as an ISO, an RTO, or an approved market monitor.[20]

27. Based on Staff's recommendation, we propose and seek comment on Market Behavior Rule # 3. Specifically, we seek comment on whether this proposed rule would be sufficient in its scope and breadth to cover any and all matters relevant to wholesale markets, including maintenance and outage data, bid data, price and transaction information, and load and resource data. In addition, we seek comment on whether this remedial authority would serve as a useful and appropriate tool in ensuring just and reasonable rates.

Market Behavior Rule #4: Reporting

To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas price indices, Seller shall provide complete, accurate and factual information to any such publisher. Seller shall notify the Commission of whether it engages in such reporting for all sales. In addition, the seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

28. In the Western Markets Report, Staff proposes that all electric market-based rate tariffs and authorizations be conditioned to expressly require that sellers provide complete, accurate, and honest information to any entity that publishes price indices and to require that data sent to firms publishing price indices be provided by the risk management office of the company, not the trading desk or a trader, and be certified by the chief risk officer.[21]

29. Based on Staff's recommendation, we propose and seek comment on Market Behavior Rule #4. In the Western Markets Report, Staff found that the markets for natural gas and electricity in California are inextricably linked, that there were dysfunctions in these markets that fed off each other, and that the dysfunctions in the natural gas market appear to have stemmed, at least in part, from efforts to manipulate price indices compiled by trade publications—by fabricating trades, inflating the volume of trades, omitting trades, and adjusting the price of trades.[22]

30. Staff further found that the predominant motives for reporting false information were to influence reported gas prices, to enhance the value of financial positions or purchase obligations, and to increase reported volumes to attract participants by creating the impression of more liquid markets. In light of these findings, we seek comment on whether Market Behavior Rule #4, as proposed, would remedy the abuses outlined by Staff in the Western Markets Report by ensuring that published price indices represent a fair and accurate measure of actual prices and trading volumes.

31. With regard to standards and requirements for price reporting, on April 24, 2003, we convened a public conference in Docket No. AD03–7–000, together with the Commodity Futures Trading Commission (CFTC), to consider natural gas price formation issues, including the development of alternative index formation models. At that conference and from comments submitted thereafter, we have received valuable input helping us refine the options available. To that end, we have conducted a follow-up conference, also with CFTC participation, for both natural gas and electricity indices.

32. While we are considering requiring jurisdictional entities to report transactions to an entity responsible for index creation, we note that our efforts towards resolution of this issue will be in Docket No. AD03–7–000. Market Behavior Rule #4 states that sellers will be required to adhere to other standards or requirements as the Commission may order. Based upon our review of the record developed in Docket No. AD03–7–000, we may issue such an order to be implemented at the same time as the market-based tariff rules proposed herein.

Market Behavior Rule #5: Record Retention

Seller will retain all data and information necessary for the reconstruction of energy or energy products prices it charges, or the prices it reports for use in published price indices, for a period of three years.

33. In the Western Markets Report, Staff recommends that all electric market-based rate tariffs and authorizations be expressly conditioned to require sellers to retain data and information needed to reconstruct a published price index for a period of three years.[23]

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anticompetitive acts. Engaging in manipulation, for example, in order to maximize profits, is not a legitimate business purpose.

[20] *See* Western Markets Report at ES–17. In this regard, EPSA, in its code of ethics and sound trading practices, requires its members to ''provide market and transaction information to regulators and market monitors in compliance with all applicable rules and requirements and [to] continue to cooperate with regulators and market monitors as reasonably necessary to assist in their understanding of market operations.''

[21] *Id.* Similarly, EPSA, in its code of ethics and sound trading practices, requires its members to ''ensure that any information disclosed to the media, including market publications and publishers of surveys and price indices, is accurate and consistent.''

[22] *Id.* at III–2 (noting that, to date, five major traders—Wiliams, Dynegy, AEP, CMS, and El Paso Merchant Energy—have admitted that their employees falsified information provided to compilers of natural gas price indices).

[23] *See* Western Markets Report at ES–14 and III–52. EPSA, in its code of ethics and sound trading practices, requires its members to ''maintain documentation on all transactions for an

34. Based on Staff's recommendation, we propose and seek comment on Market Behavior Rule #5. In the Western Markets Report, Staff found that companies had little, if any, formal procedures in place to ensure the accuracy of the data reported to the trade press. Staff also found that companies had reported inaccurate information. Staff found that these inaccuracies were attributable to unstructured or nonexistent processes for reporting (*e.g.*, taking the simple arithmetic average of the high and low trades), making up trades to come up with an average that was the midpoint of the traders' perceived range, and entering fictitious trades (both prices and volumes) to replicate prices reported to trading platforms. We seek comments on whether Market Behavior Rule #5, as proposed, would ensure that companies adopt suitable retention policies that would permit the Commission and interested entities to better monitor these transactions and practices, to the extent necessary and appropriate.

Market Behavior Rule #6: Related Tariffs

Seller shall not violate or collude with another party in actions that violate Seller's code of conduct or Order No. 889 standards of conduct.

35. In the Western Markets Report, Staff found that sellers had failed to abide by their market-based rate codes of conduct and their Order No. 889 standards of conduct. These tariff provisions, among other things, require the functional separation of transmission and wholesale merchant personnel. In one case, Staff found that a power marketer used a third party to circumvent the Commission's prohibition on affiliate sales.[24]

36. To better monitor and deter these tariff violations, we propose and seek comment on Market Behavior Rule #6. Specifically, we seek comment on whether the standard as proposed is sufficient in its scope and breadth to cover any and all matters relating to violations of the market-based rate codes of conduct and the Order No. 889 standards of conduct. We seek comment on whether this compliance rule would be an effective way for the Commission to better ensure that the conduct of public utilities is consistent with the public interest.

Complaint Procedures and Limitations on Disgorgement Liability

37. As noted above, in crafting the market behavior rules proposed herein, we have attempted to balance our interest in providing adequate certainty for market participants to encourage fair, robust competition, with our equal commitment to protecting customers from the abuses of market power and other anticompetitive behavior. Looking ahead, we want to formalize both our market rules and their consequences for greater market certainty. Accordingly, we further seek comment on the procedural limitations proposed below.

38. First, we propose to limit the applicability of potential disgorgement of unjust profits exposure by requiring that any violation alleged by a market-participant be made on a transaction-specific basis and that any market participant request for such a remedy be made no later than 60 days after the end of the calendar quarter in which the violation is alleged to have occurred. If a market participant can show that it did not know and should not have known of the behavior which forms the basis for the complaint, within the period proscribed above, then the 60-day period will run from the time when the market participant knew or should have known of the behavior. In addition, we propose to restrict remedies sought in market participant complaints to the specific transactions which are the subject of these complaints.[25]

39. For example, the backward-looking scope of remedial action due to an allegation made by a market participant concerning a violation of the behavioral rules contained in a market-based rates tariff would be limited to the period reaching to the beginning of the calendar quarter referenced above. Thus, an allegation could be made up to 60 days after March 31 of a calendar year seeking disgorgement of unjust profits for a transaction taking place in the quarter ending March 31. Any other action taken by the Commission on the basis of such allegation would be prospective only.

40. These time limits will apply to complaints initiated by market participants and not to those initiated by the Commission. The Commission has broad remedial authority to act in the event of violations of statutory or regulatory requirements or rules in applicable tariffs.[26] Where there is a violation of the market behavior rules that are adopted for all new and existing market-based rate tariffs and authorizations, the Commission is proposing to retain the full scope of its authority to provide remedies upon its own motion. Thus, the Commission and its staff will not be subject to the time limitation on allegations of tariff violations. The Commission believes that this properly balances the interest of market participants in finality with the need to be able to take action against tariff violations.

41. Other limitations proposed by commenters in this proceeding have not been included in our proposal. For example, while several commenters have argued that sales into markets with Commission-approved market monitoring and mitigation should be exempt from any market behavior rules approved herein we are not including this limitation in our proposal. The findings made by Staff in the Western Markets Report illustrate that organized, bid-based markets, even those with approved market monitoring and mitigation procedures, remain vulnerable to anticompetitive behavior and the exercise of market power. Accordingly, Staff thus recommended that market behavior rules be adopted for all markets without exception.

42. Other commenters have suggested that entities such as power marketers and small generators should be exempted from our market behavior rules because entities such as these are unable to exercise market power in the markets in which they operate. We disagree. In the Western Markets Report, Staff found that power marketers and small generators can and have engaged in practices and transactions which our proposed market behavior rules are designed to prohibit. Accordingly, we propose to apply our market behavior rules to all sellers with market-based rate tariffs and authorizations.

Additional Tariff Revisions Proposed By Staff

43. In addition to the tariff revisions discussed above, Staff, in the Western Markets Report, also proposed tariff revisions relating to a seller's use of trading platforms, based on Staff's review of Enron's trading platform, Enron Online. Staff found that Enron Online lacked transparency and was subject to manipulation by Enron.[27] Accordingly, Staff recommended that

appropriate period of time as required under applicable laws and regulations.''

[24] *See also* Idaho Power Company, *et al.* (Docket No. IN03–9–000).

[25] Such claims, moreover, would be required to comply with the Commission's revised complaint procedures in 18 CFR § 385.206 (2003). *See Lester C. Reed* v. *Georgia Power Co.*, 94 FERC ¶ 61,100 (2001).

[26] San Diego Gas & Electric Co., 96 FERC ¶ 61,120 at 61,507–08 (2001), *citing* Washington Water Power Co., 83 FERC ¶ 61,282 (1998).

[27] *See* Western Markets Reports at ES–17.

future trading platforms be designed to provide a sufficient level of transparency to enable users to understand the movements of the market. Staff also recommended that the Commission condition electric power market-based rate tariffs and authorizations to require that sellers who use trading platforms use only those trading platforms that employ a ''credit change monitor,'' *i.e.*, a monitor that could be used to evaluate unusual patterns in credit changes in the platform. Staff found that without these safeguards, the credit structure could be used to manipulate access to other traders and the perceived market price.

44. Staff also recommended conditioning electric power market-based rate tariffs and authorizations to require that sellers who use trading platforms use only those trading platforms that agree to provide the Commission with full access to trade reporting and order book information for the trading systems and agree to adhere to appropriate monitoring requirements. To the extent the Commission promulgates standards for trading platforms, the Commission is considering conditioning electric power market-based rate sellers to use only those platforms that meet certain standards. The Commission seeks comment on this issue. We will not propose a market behavior rule relating to this recommendation at this time, however, pending our further review of this matter.

Legal Authority

45. A number of commenters in this proceeding have challenged the Commission's legal authority under the FPA to condition sellers' market based rate tariffs and authorizations, as proposed in the November 20 Order. These commenters have asserted, among other things, that the potential financial consequences for sellers found to be in violation of their market-based rate tariffs, as revised, would violate the filed rate doctrine and the refund limitations set forth in Section 206(b) of FPA.[28]

46. For the reasons discussed below, we reject these challenges to the Commission's authority. We have initiated this proceeding under Section 206, for the purpose of examining whether sellers' market-based rate tariffs are just and reasonable, or whether, conversely, they should be revised as proposed herein. Should we determine that sellers' currently effective tariffs are unjust and unreasonable or may lead to unjust and unreasonable rates without the inclusion of the market behavior rules we propose, we will require that these tariffs be revised to include the rules prospectively, as Section 206 requires.[29] Thus, these tariff revisions, if approved, would not violate the filed rate doctrine.[30]

47. Nor would the refund limitations of Section 206(b) of the FPA bar the Commission from enforcing the tariff revisions proposed herein. Rather, any remedies stemming from a violation of our proposed tariff provisions would be based on the tariff conditions themselves, as approved herein. It is well settled that the Commission may take actions and impose remedies when tariffs are violated. These actions, moreover, would be fully consistent with the oversight responsibilities implicit in our market-based rates program.

48. Sellers' authorizations, in this regard, rely upon the existence of competitive markets. As illustrated by the Western Markets Report, it is possible for actions to be taken by sellers that can affect whether the prices charged in such markets are at competitive levels. Conditioning market-based rate authority to require sellers to comply with market behavior rules will help ensure that sellers do not engage in anti-competitive behavior and that just and reasonable rates will be achieved. By imposing actionable behavioral rules conditioned upon the risk of material remedial action, the Commission can further the goal of competition while protecting consumers and other market participants who do not engage in anti-competitive behavior.

49. Thus, while we are undertaking a Section 206 investigation to determine whether market-based rate tariffs must be revised to include the proposed market behavior rules to be just and reasonable, the potential remedies resulting from violations of such rules will flow from our conditioning such tariffs to provide, as a component of the tariff, a clear right for the Commission to enforce its standards and for affected parties to be compensated for violations.[31] Such actions would be in the nature of a proceeding to determine whether there has been a tariff violation, not a complaint that rates, terms or conditions were unjust and unreasonable under Section 206.

50. The Commission has ample authority to condition market-based rate tariffs in this fashion.[32] Here, these conditions are both necessary and appropriate to ensure that rates charged by sellers in the wholesale market will be based on, and influenced by, competitive factors. We do not intend for these tariff provisions to supersede or replace in any way any party or the Commission's rights under Section 206 to file a compliant asserting that any rates, term or condition or service are unjust and unreasonable and requires revision as we are proposing with market-based tariffs herein.

51. Finally, we reject commenters' assertion that the initiation of a rulemaking proceeding would be required to implement the tariff provisions proposed in this proceeding. As we noted above, the Commission is making its proposed revisions to sellers' market-based rate authorizations in this proceeding, because these proposals would embody tariff revisions applicable to individual sellers, not rule changes. As we also noted, however, we are taking this action in the context of an investigation with comment procedures designed to implement full

[28] Section 206(b) requires that any refunds made in a Section 206 proceeding initiated by the Commission on its own motion, be based on a refund effective date no earlier than 60 days after the publication by the Commission of notice of its intent to initiate such a proceeding, or, in the case of a complaint, no earlier than 60 days after the complaint was filed. Section 206(b) also limits the refund effective period to 5 months after the expiration of the such 60-day period.

[29] The Commission would intend to make the behavioral rules effective no earlier than the date of issuance of an order revising market-based rates tariffs to include new behavioral rules.

[30] Commenters also assert that the filed rate doctrine would be violated in this case because the behavioral standard, as proposed in the November 20 Order, failed to provide adequate notice regarding the conduct it would prohibit. However, we will not address these allegations here, given the significant revisions to the market behavior rules we propose to adopt here. In fact, the ''filed rate,'' in this case, would include a set of specific behavioral standards voluntarily accepted by the seller, the meaning and intent of which will be fully aired in this proceeding. In addition, the filed rate would make explicit that any violation of our market behavior rules would potentially result in financial consequences, as discussed herein. Under these circumstances, our market behavior rules would provide the necessary predictability required by the filed rate doctrine.

[31] We imposed a similar obligation, pursuant to our conditioning authority, in the California Refund Proceeding. *See San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services, et al.*, 97 FERC ¶ 61,121, 61,370 (2000), *order on reh'g, San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services, et al.*, 97 FERC ¶ 61,275 (2001), *appeal pending, Public Utilities Commission of the State of California, et al.* v. *FERC*, Nos. 01–71051, *et al.* (9th Cir. June 29, 2001 and later).

[32] In fact, nothing in the Regulatory Fairness Act (RFA) (modifying FPA Section 206) or its legislative history suggests that Congress intended to address or limit the Commission's authority to condition market-based rate authorizations. Congress passed the RFA, which established the 15-month refund effective period, to give the Commission authority to order rate reductions for the period before the conclusion, but after the start, of Section 206 proceedings. *See San Diego Gas and Electric Co.* v. Sellers of Ancillary Services, *et al.*, 97 FERC at 62,220.

public input. The Commission, moreover, is not limited to notice and comment rulemaking in developing policy. Agencies generally are permitted considerable discretion to choose whether to proceed by rulemaking or by adjudication. Our decision to act in this proceeding pursuant to Section 206 is clearly within our authority.

Comment Procedures

52. We will provide interested entities an opportunity to file comments and reply comments regarding the proposed market behavior rules set forth in the Attachment to this order. Initial comments will be due 30 days from the date this order is published in the **Federal Register**, and reply comments will be due 30 days from the date that initial comments are filed.

The Commission Orders:

(A) The tariff provision proposed by the Commission in the November 20 Order is hereby modified and revised, as set forth in the Attachment to this order, and as discussed herein;

(B) Interested entities may file comments and reply comments regarding the market behavior rules set forth in the Attachment to this order. Initial comments will be due 30 days from the date this order is published in the **Federal Register**, and reply comments will be due 30 days from the date that initial comments are filed;

(C) Requests for rehearing of the November 20 Order are hereby dismissed, as discussed in the body of this order;

(D) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Commissioner Massey concurring in part with a separate statement attached.

Commissioner Brownell concurring with a separate statement attached.

Magalie R. Salas,

Secretary.

Attachment—Market Behavior Rules

As a condition of market-based rate authority, [Company Name] (hereafter, Seller) will comply with the following Market Behavior Rules:

1. *Unit Operation:* Seller will operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the rules and regulations of the applicable power market.

2. *Market Manipulation:* Actions or transactions without a legitimate business purpose which manipulate or attempt to manipulate market prices, market conditions, or market rules for electric energy and/or energy products, or result in market prices for electric energy and/or electric energy products which do not reflect the legitimate forces of supply and demand, are prohibited. Prohibited actions and transactions include, but are not limited to:

A. pre-arranged offsetting trades of the same product among the same parties, which trades involve no economic risk and no net change in beneficial ownership (sometimes called ''wash trades'');

B. transactions predicated on submitting false information to transmission providers or other entities responsible for operation of the transmission grid (such as inaccurate load or generation data; scheduling non-firm service or products sold as firm; or conducting ''paper trades'' where an entity falsely designates resources and fails to have those resources available and feasibly functioning);

C. transactions in which an entity first creates artificial congestion and then ''relieves'' such artificial congestion;

D. collusion with another party for the purpose of creating market prices at levels differing from those set by market forces; and

E. bidding the output of or misrepresenting the operational capabilities of generation facilities in a manner which raises market prices by withholding available supply from the market.

3. *Communications:* Seller will provide complete, accurate, and factual information, and not submit false or misleading information, or omit material information, in any communication with the Commission, market monitors, regional transmission organizations, independent system operators, or similar entities.

4. *Reporting:* To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas price indices, Seller shall provide complete, accurate and factual information to any such publisher. Seller shall notify the Commission of whether it engages in such reporting for all sales. In addition, the seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

5. *Record Retention:* Seller will retain all data and information necessary for the reconstruction of the electric energy or electric energy products prices it charges or of the prices it reports for use in published price indices for a period of three years.

6. *Related Tariffs:* Seller shall not violate or collude with another party in actions that violate Seller's code of conduct or Order No. 889 standards of conduct.

Any violation of these Market Behavior Rules will constitute a tariff violation. Seller will be subject to disgorgement of unjust profits associated with the tariff violation, from the date on which the tariff violation occurred. Seller may also be subject to suspension or revocation of its authority to sell at market-based rates or other appropriate non-monetary remedies.

Massey, Commissioner, *concurring in part:*

I wholeheartedly support conditions to all market-based tariffs that declare manipulation off limits. Such outrageous behavior has cast a pall over the promise of energy markets and has brought some companies to dire financial straits. These tariff conditions should deter bad behavior in the future. If they fail to do so, then at least the Commission will have industry wide legal tools to provide appropriate remedies. I commend Chairman Wood's strong leadership in developing this proposal.

I am writing separately to express my concern with one aspect of today's proposal. I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the market prices paid by all market participants and collected by all sellers. The Federal Power Act requires that all rates and charges be just and reasonable. Where the market has been manipulated so as to affect the market price, that price is not just and reasonable and is therefore unlawful. Simply requiring that bad actors disgorge their individual profits does not make the market whole because all sellers received the unlawful price caused by the manipulation. The narrow remedy of profit disgorgement is not an adequate remedy for the adverse effect of the bad behavior on the market price, and may not be an adequate deterrent to future behavior. The appropriate remedy may be that the manipulating seller makes the market whole.[1] Unfortunately, today's order appears to take this remedy off of the table. I would prefer to tailor the remedy to the circumstances of each case. I encourage comments on this issue.

For these reasons, I concur in part with today's order.

William L. Massey,

Commissioner.

Brownell, Commissioner, *concurring:*

1. Today we issue an order proposing to place conditions on sellers of power that have been granted market based rate authority. This proposal, coming 18 months after the Commission first launched the idea of conditioning sellers' market-based rate authorities, builds on industry events of the last few years. I have spoken about the need for the ''10 commandments'' and am encouraged that we are taking this step. Importantly, the proposal attempts to balance three goals:

- effective remedies on behalf of customers in the event anti-competitive behavior or other market abuses occur;
- clearly delineated ''rules of the road'' to market-based rate sellers while, at the same time, not impairing the Commission's ability to provide remedies for market abuses whose precise form and nature cannot be envisioned today; and,
- reasonable bounds within which conditions on market conduct will be implemented so as not to create unlimited regulatory uncertainty for individual market participants or harm to the marketplace in general.

2. I appreciate the need to balance these goals but have a fundamental concern that we've allowed markets to form without a full appreciation of what constitutes a market let alone the market dynamics that foster a truly competitive market. For example, what defines a competitive market and what constitutes scarcity pricing? These questions

[1] The Commission has accepted the make the market whole remedy as part of a settlement for withholding generation from the California PX market. *See* 102 FERC ¶ 61,108 (2003).

remain largely unanswered. I also fear that as the precise definition of manipulation develops over time, we will end up with overly proscriptive ''rules of the road'' that will dampen innovative, legitimate business tools. Finally, I am concerned about the applicability of behavioral rules to only one market segment—sellers. This troubles me—equitable rules should apply to all industry segments. I encourage and look forward to meaningful comments from all market segments. If we've learned nothing else, we've learned that rules are critical.

Nora Mead Brownell,
Commissioner.

[FR Doc. 03–17421 Filed 7–8–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7525–6]

Notice of Scientific and Technological Achievement Awards Subcommittee; Closed Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB) announces a closed meeting of the Scientific and Technological Achievement Awards Subcommittee to recommend to the Assistant Administrator of the Office of Research and Development (ORD) the recipients of the Agency's 2003 Scientific and Technological Achievement Cash Awards.

DATES: This closed meeting will take place on August 5–7, 2003.

ADDRESSES: This closed meeting will take place at the U.S. Environmental Protection Agency (EPA), Washington, DC, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this announcement may contact Ms. Kathleen White, Designated Federal Officer, U.S. EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460, telephone: (202) 564–4559 or e-mail at: *white.kathleen@epa.gov.* General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*

SUPPLEMENTARY INFORMATION:

Summary: Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) EPA has determined that the meeting will be closed to the public. The purpose of the meeting is to recommend to the Assistant Administrator of the Office of Research and Development (ORD) the recipients of the Agency's 2003 Scientific and Technological Achievement Cash Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. In making these recommendations, including the actual cash amount of each award, the Agency requires full and frank advice from the EPA Science Advisory Board. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel issues, where disclosure of information of a personal nature would constitute an unwarranted invasion of personal privacy, are protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

Dated: June 20, 2003.

Christine Todd Whitman,
Administrator.

[FR Doc. 03–17341 Filed 7–8–03; 8:45 am]
BILLING CODE 6560–52–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0215; FRL–7313–3]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0215, must be received on or before August 8, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: kumar.rita@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0215. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0215. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0215. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0215.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0215. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the

information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included in Any Previously Registered Products

1. *File Symbol:* 3125–LIO. *Applicant*: Bayer Corporation 8400 Hawthorne Rd., P.O. Box 4913, Kansas City, MO 64120.*Product name*: Spirodiclofen Technical. *Type of product:* Insecticide. *Active ingredient*: Spirodiclofen at 97.8%. *Proposed classification/Use*: None. For manufacturing use only.

2. *File Symbol:* 3125–LOR. *Applicant*: Bayer Corp. *Product name*: Envidor 2SC. *Type of product:* Insecticide. *Active ingredient*: Spirodiclofen at 22.3%. *Proposed classification/Use*: None. For the control of mites on citrus, pome fruit, stone fruit, and tree nuts.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 25, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–16929 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0190; FRL–7313–4]

Notice of Receipt of Requests to Voluntarily Cancel Technical and Formulation Intermediate Pesticide Registrations of 2,4-Dichlorprop and Mecoprop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by Bayer Cropscience, BASF Corporation, and A.H. Marks and Company, Ltd., to voluntarily cancel all technical and formulation intermediate pesticide registrations of 2,4-DP, 2-(2,4-dichlorophenoxy) propionic acid, commonly known as dichlorprop, and MCPP, 2-(4-chloro-2-methylphenoxy) propionic acid, commonly known as mecoprop, including their associated salts and esters.

DATES: All three registrants have elected to waive the 180–day comment period usually associated with a public notice of voluntary cancellation. Unless a request is withdrawn by the registrants by August 8, 2003, for EPA Registration Numbers: 264–706, 264–707, 264–708, 264–709, 264–710, 264–711, 264–712, 264–713, 264–714, 264–715, 7969–116, 7969–127, 15440–12, 15440–14, 15440–16, and 15440–17, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than August 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Howard, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8172; e-mail address: *howard.markt@epa.gov.*

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0190. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants

to cancel 16 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
264–706	2,4–DP Dichlorprop	2,4–DP Acid
264–707	2,4–DP Technical	2,4–DP Acid
264–708	Technical 2,4–DP	2,4–DP Acid
264–709	DP–4 Amine	2,4–DP DMA Salt
264–710	2,4–DP Isooctyl Ester Technical	2,4–DP Isooctyl Ester
264–711	DP–4	2,4–DP Isooctyl Ester
264–712	MCPP 98% Technical Acid Herbicide	MCPP Acid
264–713	Technical MCPP Acid	MCPP Acid
264–714	MCPP-Tech	MCPP Acid
264–715	MCPP Technical	MCPP Acid
7969–116	MCPP Amine 4	MCPP DMA Salt
7969–127	Mecoprop AK Technical Acid	MCPP Acid
15440–12	Technical 2-(2,4-Dichlorophenoxy Propionic) Acid	2,4–DP Acid
15440–14	Marks CMPP (Mecoprop) Technical Acid	MCPP Acid
15440–16	Marks Technical Iso-Octyl Ester of 2,4-DP	2,4-DP Isooctyl Ester
15440–17	Technical Mecoprop	MCPP Acid

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 30–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
264	Bayer Cropscience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709
7969	BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528
15440	A.H Marks and Company, Ltd., Wyke Bradford, West Yorkshire, England BD12–9EJ

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 8, 2003. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the U.S. and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, 2,4–DP, Dichlorprop, MCPP, Mecoprop, Pesticides and pests.

Dated: June 19, 2003.

Richard P. Keigwin, Jr.,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 03–17211 Filed 7–8–03; 8:45 am]

BILLING CODE 6560—50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0214; FRL–7313–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications submitted by Mitsui Chemicals, Inc. to register pesticide products containing dinotefuran a new active ingredient not included in any previously registered products pursuant

to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0214, must be received on or before August 8, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: kumar.rita@epa.gov

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0214. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit

comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0214. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0214. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0214.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0214. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows from Mitsui Chemicals Inc., 3-2-5 Kasumigaseki Chiyoda-ku, Tokyo 100–6070 Japan to register the pesticide products containing new active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications. All of the products listed in the table below contains the chemical dinotefuran.

PRODUCTS CONTAINING DINOTEFURAN AN ACTIVE INGREDIENT NOT INCLUDED IN ANY PREVIOUSLY REGISTERED PRODUCTS

File Symbol	Product Name	% of Active Ingredient	Proposed Use
33657–RN	Dinotefuran Technical	99	For manufacturing purposes
33657–RT	Dinotefuran 20SG	20	Cotton aphid, sweet potato whitefly, silverleaf whitefly, banded wing whitefly, plant bug (lygus), leafhopper, thrips cabbage aphid, green peach aphid, leafminer, melon aphid, potato aphid, Colorado potato beetle, flea beetles, grape mealybug, glassy-wing sharp-shooter
33657–RA	Dinotefuran 20% Turf and Ornamental	20	Mole cricket, white grub larvae, cutworms, chinchbug, adelgids, aphids, Japanese beetles (adults), lacebugs, leaf beetles, leafhoppers, leafminers, mealybugs, saw-fly larvae, thrips, whiteflies
33657–RO	Dinotefuran Ant Bait	0.38	Ants
33657–RI	Dinotefuran Fly Bait	0.5	Flies

PRODUCTS CONTAINING DINOTEFURAN AN ACTIVE INGREDIENT NOT INCLUDED IN ANY PREVIOUSLY REGISTERED PRODUCTS—Continued

File Symbol	Product Name	% of Active Ingredient	Proposed Use
33657–RL	Dinotefuran House and Garden Ready to Use Spray	0.5	Cockroaches (American and German), ants, crickets, small flying moths, flies, gnats, and mosquitoes
33657–RR	Dinotefuran Total Release Fogger	0.6	Cockroaches, fleas, flies, mosquitoes, wasps, hornets, yellow jackets, silverfish, ants, and moths
33657–RG	Dinotefuran Cat Spot-On	5.61	Fleas
33657–RU	Dinotefuran 20% PCO	20	Cockroaches (American and German), ants, crickets, small flying moths, flies, gnats, and mosquitoes
33657–EN	Dinotefuran TK	99	For formulating into insecticides
33657–RE	Dinotefuran Shuriken Cockroach Gel Bait	0.5	Cockroaches
33657–EL	Dinotefuran 0.2% Lawn Granule	0.2	Annual bluegrass weevil, ants, asiatic garden beetle, billbugs, black turfgrass ataenius, cockroaches, cutworms, european chafer, green June beetle, grubs Japanese beetle (nymph), leafhoppers, mole crickets, northern masked chafer, oriental beetle, southern masked chafer and vegetable weevils
33657–ET	Dinotefuran 0.4% Lawn Granule	0.4	Annual bluegrass weevil, ants, asiatic garden beetle, billbugs, black turfgrass ataenius, cockroaches, cutworms, european chafer, green June beetle, grubs Japanese beetle (nymph), leafhoppers, mole crickets, northern masked chafer, oriental beetle, southern masked chafer and vegetable weevils
33657–ER	Dinotefuran 10SL	10	Cotton aphid, sweet potato whitefly, silverleaf whitefly, banded wing whitefly, plant bug (lygus), leafhopper, thrips cabbage aphid, green peach aphid, leafminer, melon aphid, potato aphid, Colorado potato beetle, flea beetles, grape mealybug, glassy-wing sharpshooter, mole cricket, white grub larvae, cutworms, chinchbug, adelgids, aphids, Japanese beetles (adults), lacebugs, leaf beetles, mealybugs, sawfly larvae
33657–EO	Dinotefuran 20SG TK	20	To be used for manufacturing purposes
33657–GG	Dinotefuran 20SG Foliar Insecticide	20	Aphids, adelgids, leafhoppers, leaf miners, black vine weevil larvae, roundheaded borers, flatheaded borers, Japanese beetle adults, lacebugs, leaf beetles, mealybugs, pine tip moth larvae, psyllids, sawfly larvae, scale insects, thrips and whiteflies
33657–EE	Dinotefuran Fire Ant Bait 0.005%	0.005	Fire ants
33657–EI	Dinotefuran 10% Spot-On For Cats	10	Cats
33657–GR	Dinotefuran 0.5% Cockroach Gel Bait Professional	0.5	Cockroaches
33657–EA	Dinotefuran 10% Spot-On For Dogs	10	Dogs

PRODUCTS CONTAINING DINOTEFURAN AN ACTIVE INGREDIENT NOT INCLUDED IN ANY PREVIOUSLY REGISTERED PRODUCTS—Continued

File Symbol	Product Name	% of Active Ingredient	Proposed Use
33657–EU	Dinotefuran 0.5% Multi-Purpose RTU	0.5	Cockroaches (including adult and immature stages), ants, boxelder bugs, centipedes, crickets, dermestids, firebrats, fleas, palmetto bugs, silverfish, sowbugs and waterbugs, spiders, ground beetles, pillbugs, scorpions, houseflies, gnats, mosquitoes, small flying moths, grain beetles (rusty, merchant and sawtoothed), flour beetles (red and confused), chocolate moths, cigarette beetles, clover mites, cluster flies, drugstore beetles, elmleaf beetles, rice weevils, lesser grain borers, tobacco moths, carpet beetles, bedbugs, whiteflies, aphids, army worms, exposed thrips, red mites, leafminers
33657–EG	Dinotefuran 0.5% Ornamental and Vegetable RTU	0.5	Colorado potato beetle, leafhopper, lygus bug, aphids, pepper weevil, potato leafhopper
33657–GN	Dinotefuran 0.2% Roach Bait Stations	0.2	Roaches
33657–GE	Dinotefuran 0.5% Roach Bait Stations	0.5	Roaches

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 25, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–16928 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0204; FRL–7314–1]

Zinc Phosphide; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0204, must be received on or before August 8, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0204. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0204. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0204. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0204.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0204. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follow proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. The petitions summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 2E6419, 1E6306, 1E6270, 1E6337, 9E5082, 0E6199, and 1E6292

EPA has received pesticide petitions (2E6419, 1E6306, 1E6270, 1E6337, 9E5082, 0E6199, 1E6292) from the IR-4 Project, Center for Minor Crop Pest Management, Rutgers, The State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.284 by establishing tolerances for residues of the rodenticide zinc phosphide in or on the following raw agricultural commodities:

- PP 2E6419 proposes to establish a tolerance in or on alfalfa, forage and alfalfa, hay at 0.1 parts per million (ppm).
- PP 1E6306 proposes a tolerance in or on barley, grain and barley, hay at 0.05 ppm, and barley, straw at 0.2 ppm.
- PP 1E6270 proposes a tolerance in or on bean, dry, seed at 0.05 ppm.
- PP 1E6337 proposes tolerances in or on beet, sugar, roots at 0.05 ppm and beet, sugar, tops at 0.2 ppm.
- PP 9E5082 proposes a tolerance in or on potato at 0.05 ppm.
- PP 0E6199 proposes a tolerance in or on timothy hay and timothy forage at 0.05 ppm.
- PP 1E6292 proposes a tolerance in or on wheat grain; wheat, hay; and wheat, straw at 0.05 ppm.

EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the requests. Additional data may be needed before EPA rules on the petitions.

A. Toxicological Profile

1. *Acute toxicity*. The rat acute oral lethal dose $(LD)_{50}$ values for zinc phosphide technical (89% active ingredient (a.i.) ranged from 13–35 milligrams/kilogram (mg/kg) body weight (bwt) and averaged 21 mg/kg. The acute dermal LD_{50} was greater than 2,000 mg/kg for zinc phosphide technical (94% a.i.) in rabbits. The 4–hour inhalation lethal concentration $(LC)_{50}$ on end-use product was less than 69 mg/cubic meter(m^3) air (aerosol). Zinc phosphide was not irritating dermally to rabbit skin (94% a.i.) and caused only slight conjunctival redness, chemosis, and discharge in the rabbit's eyes. Zinc phosphide end-use product did not cause skin sensitization in guinea pigs. No toxicology studies were identified by EPA which demonstrated the need for an acute dietary risk assessment (65 FR 49936).

2. *Genotoxicity*. Salmonella TA-strains of bacteria were exposed to zinc phosphide (97% a.i.) suspended in dimethyl sulfoxide (DMSO), at doses up to 5,000 µg/plate, with and without metabolic activation (S9). Zinc phosphide was negative for gene mutation in the Ames test. Mouse lymphoma cells were exposed to zinc phosphide (97% a.i.) with and without mammalian metabolic activation (S9). Increased mutants at the thymidine kinase locus (TK) were induced in a dose-dependent manner at doses of 10 through 80 µg/mL (+/- S9). Zinc phosphide was positive for gene mutation in this mouse lymphoma assay. Mice were treated with zinc phosphide (97% a.i.) suspended in corn oil up to severely toxic levels (150 mg/kg). No increased aberrations (micronuclei) were induced. Zinc phosphide was negative for mutagenicity in this micronucleus test.

3. *Reproductive and developmental toxicity*. The requirements for a two-generation reproductive toxicity study in rats and a developmental study on a non-rodent species were waived in the Reregistration Eligibility Decision (RED Zinc Phosphide, EPA 738–R–98–006, July 1998). In a developmental toxicity study, the maternal no observed adverse effect level (NOAEL) was determined to be 2.0 mg/kg and the lowest effect level (LEL) was 4.0 mg/kg based on mortality. The developmental NOAEL was at or above 4.0 mg/kg, which was the highest dose tested.

4. *Short- and intermediate-term toxicity*. Based on the acute dermal LD_{50} study in rabbits, no appropriate toxic effects were identified for risk assessment. In that study no mortalities were observed at 5,000 mg/kg. At the lowest observed adverse effect level (LOAEL) of 2,000 mg/kg, there was a decrease in body weight. Based on the physical properties of the chemical, dermal absorption is expected to be very low, since zinc phosphide reacts with water and stomach acid to produce the toxic gas phosphine from oral, but not dermal exposure. As no endpoint of toxicological concern for dermal

exposure has been identified, no dermal penetration data were required. The requirement for an acute inhalation study has been waived; thus, zinc phosphide has been placed in Toxicity Category I for acute inhalation exposure.

5. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for zinc phosphide at 0.0001 mg/kg/day. This RfD is based on a subchronic oral study in rats with a NOAEL of 0.1 mg/kg/day and an uncertainty factor (UF) of 1,000 based on increased mortality, increase in absolute and relative liver weight and hematological changes at the LOAEL of 1 mg/kg/day. An uncertainty factor of 100 was applied to account for both the interspecies extrapolation and intraspecies variability. An additional UF of 10 was applied to account for the lack of reproductive data, and the lack of chronic toxicity data in a non-rodent species (65 FR 49936).

6. *Animal metabolism*. Since residues are expected to be minimal or nonexistent, the requirement for a metabolism study with zinc phosphide has been waived. If new uses result in detectable residues, then this requirement will be reinstated.

7. *Metabolite toxicity*. Since residues are expected to be minimal or nonexistent, the requirement for a metabolism study with zinc phosphide has been waived.

8. *Carcinogenicity*. The requirement for carcinogenicity studies has been waived for zinc phosphide because chronic exposure is expected to be negligible.

9. *Endocrine disruption*. There are no data available to suggest that zinc phosphide will adversely affect the immune or endocrine systems.

B. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.284) for the residues of phosphine resulting from the use of zinc phosphide, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm in or on grapes to 0.1 ppm in or on grasses (rangeland). Zinc phosphide uses on grapes, pasture, and rangeland grasses, sugar beets, and sugar cane are classified as food uses. Currently registered uses on alfalfa, barley, wheat, and timothy are classified as non-food uses. The recently submitted petitions seek to amend the method of applications for these crops as follows:

i. Alfalfa; from underground or in burrow builder, or bait box use to above ground broadcast application. The proposed application would limit the timing of application to the period during dormant season (Idaho), or following removal of all cut alfalfa and prior to new growth obtaining 2 to 3 inches (California and Idaho),

ii. Barley and wheat; from dormant season use (underground or in burrow builders) to above ground broadcast application prior to grain head formation.

iii. Timothy; from dormant season use, with no animal grazing, to use during crop dormancy but permitting livestock grazing after 158 days. These types of applications are classified as food uses; therefore, a tolerance is required. There is no reasonable expectation of secondary residues in meat, milk, poultry, or eggs. Any residues of zinc phosphide ingested by livestock would be metabolized to naturally occurring phosphorous compounds. Risk assessments were conducted by EPA to assess dietary exposures and risks from zinc phosphide applied as non-food use as follows: Acute and chronic exposure and risk. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Currently, it is not known whether the proposed use of zinc phosphide on the subject crops will result in acute or chronic human dietary exposure to zinc phosphide.

However, the petitioner notes the following:

i. Zinc phosphide is not systemic (i.e., it will not move to other portions of the plant such as roots and affect a root crop such as potatoes or sugar beets).

ii. Residues of phosphine are less than the limit of quantification (0.05) in wheat and barley grain, in dry beans, in potatoes, in sugar beet roots, and in timothy hay.

iii. The grain and sugar beet roots will be processed prior to human consumption.

iv. There is no expectation of secondary residues in meat, milk, poultry, and eggs as a result of the registered and proposed uses.

2. *From drinking water*. Zinc phosphide degrades rapidly to phosphine and zinc ions both of which adsorb strongly to soil and are common nutrients in soil. Zinc phosphide and its degradation products appear to have low potential for ground water and surface water contamination. Therefore, dietary exposure is not expected from either ground water or surface water fed drinking water.

3. *From non-dietary exposure*. Zinc phosphide is currently registered for use on residential non-food sites. A detailed residential exposure assessment is contained in the RED for zinc phosphide (RED Zinc Phosphide, EPA 738–R–98–006, July 1998). The residential exposure assessment evaluated exposure from accidental ingestion of zinc phosphide. No other residential exposure assessment was required. It is stated in the RED that the Agency believes that ''accidental ingestion'' of zinc phosphide baits should not be included in the FQPA determination for tolerance setting.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Zinc phosphide, aluminum phosphide, and magnesium phosphide all generate phosphine gas. However, the toxicity from phosphine gas is an acute effect and is readily eliminated from the body. Aluminum and magnesium phosphide, unlike zinc phosphide which is a bait, are used in fumigations. Exposure to phosphine gas from both bait and fumigation treatments is highly unlikely. It is unclear whether zinc phosphide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides, where a cumulative risk approach is based on a common mechanism of toxicity, zinc phosphide does not appear to produce a toxic metabolite produced by other substances.

C. Aggregate Exposure

1. *Acute and chronic risk*. There are currently no drinking water, residential, or dietary components to acute and chronic aggregate exposure to zinc phosphide residues. Thus, acute and chronic aggregate exposure assessments were not required in the RED (Zinc Phosphide, EPA 738–R–98–006, July 1998).

2. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. No short- or intermediate-term dermal, oral or inhalation toxicological endpoints were identified for zinc phosphide. Thus, no short- or intermediate-term risk assessments were required in the RED (Zinc Phosphide, EPA 738–R–98–006, July 1998).

3. *Aggregate cancer risk for U.S. population*. Although zinc phosphide is registered for use on food crops, no chronic toxicity or carcinogenicity

studies were required because chronic exposure to zinc phosphide or its byproducts were considered to be negligible. Thus, data are not available to classify zinc phosphide in terms of carcinogenicity and a cancer risk assessment was not performed.

D. Determination of Safety

1. *U.S. population*. The RED set the RfD at 0.0001. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health.

2. *Infants and children*. The available data base for zinc phosphide does not indicate a potential for an increased sensitivity to infants or children; however it does not include a two-generation reproductive toxicity study in rats or a developmental toxicity study for a non-rodent species. The available data provided no indication of increased sensitivity of fetal rats to *in utero* exposure to zinc phosphide. The prenatal exposure developmental toxicity study in rats demonstrated no developmental effects at the highest dose tested (4.0 mg/kg/day) which was maternally toxic. There was no assessment of *in utero* exposure to non-rodents (rabbits), nor was there an assessment of early postnatal exposure. The EPA did not require these studies because exposure from food sources is expected to be minimal to non-existent. The additional uncertainty factor (referred to in Section A.5.) will also accommodate the inability to assess the potential for increased sensitivity of infants and children, because of the lack of sufficient animal data on *in utero* and early postnatal exposure to zinc phosphide (a prenatal developmental toxicity study in rabbits and a two-generation reproductive toxicity study in rats). Although residue studies show there were quantifiable residues in sugarcane, sugar beets, and grasses, these commodities are not direct human foods and no dietary consumption is expected. EPA has determined that there is no likelihood of residues of zinc phosphide occurring in any processed commodities. Also, there is no likelihood of residues of zinc phosphide or phosphine being found through transfer of residues on grasses to meat and milk.

Based upon the likelihood that residues of zinc phosphide will not occur in processed commodities, milk and meat, there is a reasonable certainty that no harm will result from aggregate exposure to zinc phosphide residues.

E. Other Considerations

1. *Metabolism in plants and animals*. The nature of the residue in plants is adequately understood. The residue of concern is zinc phosphide measured as phosphine. There is no expectation of secondary residues in meat, milk, poultry, and eggs as a result of the registered uses. Residues of zinc phosphide ingested by livestock would be immediately converted to phosphine and metabolized to naturally occurring phosphorous compounds.

2. *Analytical enforcement methodology*. Adequate enforcement methodology (colorimetric and GLC/FPD) is available (Pesticide Analytical Method II under aluminum phosphide) to enforce the tolerance expression. Residues were less than the limit of quantification in all raw agricultural commodities except for sugar beet tops (0.05 ppm for alfalfa, barley, grain and hay, dry beans, potatoes, sugar beet roots, timothy and wheat; 0.1 for barley straw),

i. Barley grown in the state of Idaho was treated with two applications of zinc phosphide at approximately 0.12 lb a.i./A per application, 23 to 28 days apart, and were harvested 50 or 60 days after the last application. Barley was also harvested 50 days following two applications at 0.96 lb a.i./A (8X the proposed application rate). Residues were less than the limit of quantification for barley grain and hay (0.05 ppm) and straw (0.1). Because no residues were found in samples treated at the 8X rate, no processing study is needed.

ii. Dry beans grown in the state of Idaho were treated with one application of zinc phosphide at approximately 0.12 lb a.i./A, and were harvested 31 days after the application and allowed to dry in the field. Seven days after harvesting the beans were thrashed and samples taken. Residues were less than the limit of quantification (0.05 ppm) on this commodity.

iii. Potatoes grown in the state of Idaho were treated with one application of zinc phosphide at approximately 0.2 lb a.i./A, and were harvested 28 to 31 days later. Potatoes were also harvested 28 to 31 days later following an application at 1.0 lb a.i./A (5x the proposed application rate). Residues were less than the limit of quantification (0.05 ppm) on this commodity. Because no residues were found in samples treated at the 5X rate, no processing study is needed.

iv. Sugar beets grown in the state of Idaho were harvested 27 to 29 days following two treatments of zinc phosphide at approximately 0.2 lb a.i./A. Sugar beets were also harvested 27 to 29 days following two treatments of zinc phosphide at approximately 4 lb a.i./A (20X the proposed application rate). Residues were less than the limit of quantification (0.05 ppm) on sugar beet roots. Sugar beet tops contained some residue and a tolerance of 0.2 ppm is being proposed for sugar beet tops. Because no residues were found in roots treated at the exaggerated rate, there is no need for data from processed roots. (OPPTS Harmonized Guideline 860.1520(f)(3)(iii)).

v. Timothy hay grown in the state of Washington was harvested 117 days following two treatments of zinc phosphide. The first treatment was at approximately 0.2 lb a.i./A and the second treatment was at approximately 0.4 lb a.i./A (due to applicator error). The hay was allowed to dry in the field after harvest. Residues were less than the limit of quantification (0.05 ppm) on timothy hay and timothy forage at harvest.

vi. Wheat grown in the state of Idaho was treated with two applications of zinc phosphide at approximately 0.12 lb a.i./A per application, 22 to 28 days apart, and were harvested 56 to 60 days after the last application. Wheat was also harvested 56 days following two applications at 0.96 lb a.i./A (8X the proposed application rate). Residues were less than the limit of quantification (0.05 ppm) for wheat grain, hay and straw. Because no residues were found in samples treated at the 8X rate, no processing study is needed.

vii. Fresh alfalfa grown in the state of California was harvested 32 days following one treatment of zinc phosphide at approximately 0.2 lb a.i./A. Fresh alfalfa was also harvested 32 days following one treatment of zinc phosphide at approximate 0.4 lbs a.i./A (2X the proposed application rate). Residues were less than the limit of quantification (0.05 ppm) on fresh alfalfa.

viii. Alfalfa hay and fresh alfalfa grown in the state of Nebraska were harvested 21 days following one treatment of zinc phosphide at approximately 0.2 lbs a.i./A. Residues were less than the limit of quantification (0.05 ppm) on alfalfa hay and fresh alfalfa.

ix. Alfalfa hay and alfalfa forage grown in the state of Idaho were harvested three times: 28–32 days, 78–83 days, and 121–129 days following the second of two treatments of zinc phosphide at approximately 0.2 lbs a.i./A. Residues were less than the limit of quantification (0.05 ppm) on alfalfa hay and alfalfa forage. (Petition for residue tolerance for alfalfa use in Idaho soon to be submitted.)

F. International Residue Limits

No CODEX, Canadian or Mexican maximum residue levels have been established for zinc phosphide.

G. Rotational Crop Restrictions

Data for confined accumulation in rotational crops have been waived because the physical properties of zinc phosphide precludes transfer of residues to rotated crops (Zinc Phosphide RED, EPA 738–R–98–006, July 1998). Thus, rotational crop restrictions are not required.

[FR Doc. 03–17104 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0056; FRL–7313–8]

1,1,2-Trichloroethane (TCE); EPA Program Review: Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) relating to 1,1,2-trichloroethane (TCE) (CAS No. 79–00–5). The companies subject to this ECA, the Dow Chemical company; Vulcan Materials Company; Occidental Chemical Corporation; Oxy Vinyls, LP; Georgia Gulf Corporation; Westlake Chemical Corporation; PPG Industries, Inc.; and Formosa Plastics Corporation, U.S.A., have agreed to conduct toxicity testing, develop a computational dosimetry model for route-to-route extrapolations of dose response, and develop pharmacokinetics and mechanistic (PK/MECH) data that are intended to satisfy the toxicological data needs for TCE identified in a TSCA section 4 proposed test rule for a number of hazardous air pollutant (HAP) chemicals. This notice announces the availability of a report describing the findings and conclusions for the program review component of the ECA for TCE, responds to comments on the Tier I Program Review Testing, identifies modifications to Tier II ECA activities, and establishes revised deadlines for completion of Tier II testing and computational route dosimetry modeling for extrapolations listed under Tier II of the ECA for TCE.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Richard W. Leukroth, Jr., or John E. Schaeffer, Jr., Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8157; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *EPA Docket.* EPA has established an official public docket for this action under docket (ID) number OPPT–2002–0056. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA docket center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and telephone number for the OPPT Docket, which is located in EPA docket center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What is the EPA Program Review for TCE?

In the **Federal Register** of October 16, 2002 (67 FR 63913) (FRL–7275–8) EPA announced that it was conducting the program review component of the enforceable consent agreement (ECA) for the 1,1,2-trichloroethane (TCE) alternative testing program, and solicited public comment on data received under the Tier I Program Review testing segment of the ECA for TCE (CAS No. 79–00–5). Comments were to inform EPA's decision on whether or not additional data and/or model development are needed before Tier II testing and computational route-to-route dosimetry modeling extrapolations can proceed for the Tier II endpoints listed in the ECA for TCE.

Details of the testing program for TCE are available in the ECA and in the **Federal Register** of June 15, 2000 (65 FR 37550)(FRL–6494–5), in which EPA announced it had entered into an ECA and issued a testing consent order for TCE. The ECA for TCE was developed in response to EPA's request for ECA proposals for health effects testing of a number of hazardous air pollutants (HAPs or HAP chemicals), including TCE (see the proposed test rule in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1), and the proposed test rule, as amended, in the **Federal Register** of December 24, 1997 (62 FR 67466) (FRL–5742–2); February 5, 1998 (63 FR 5915) (FRL–5769–3); and April 21, 1998 (63 FR 19694) (FRL–5780–6). The HAPs rulemaking proposed testing for health effects by the inhalation route of exposure. In the proposed rule, EPA also invited the submission of proposals that included pharmacokinetics studies and model development that would permit route-to-route dosimetry extrapolation to predict for inhalation exposures. The ECA for TCE applies such an alternative approach to satisfy

data needs identified in the proposed HAPs rulemaking.

Under the TCE ECA testing program, the data needs for TCE are being addressed via an informed testing program that utilizes, wherever possible, extant data from acceptable studies performed by routes other than inhalation, testing by inhalation and the oral route, and development of pharmacokinetics and mechanistic (PK/MECH) data to support a computational dosimetry model to perform route-to-route extrapolations. Since this is a new approach, EPA and the companies included a program review step within the testing program. The testing program consists of Tier I HAPs Testing; Tier I Program Review Testing; EPA Program Review; and Tier II Testing.

Tier I HAPs Testing consisted of endpoint testing conducted by inhalation exposure for acute and subchronic toxicity. The Tier I Program Review Testing included: (1) Development of a computational dosimetry model specific for TCE in rats and mice; (2) simulation testing of the predictive capability of the model against an inhalation test data set; and (3) demonstration of the model's utility in supporting quantitative route-to-route dosimetry extrapolations. The test sponsors also developed PK/MECH data to support the application of the model to oral-to-inhalation extrapolations of dose-response for extant and Tier II Testing endpoint studies. Tier I HAPs Testing and Tier I Program Review Testing results are available in the legacy docket (OPPTS–42198C) and electronically in the e-Docket (OPPT–2002–0056).

The purpose of the program review was to determine:

1. Whether it is feasible and appropriate to apply Tier I Program Review testing data and data from other studies acceptable to EPA to support computational route-to-route extrapolations for endpoints listed in the Tier II testing segment of the ECA.

2. Whether the data from the Tier I Program Review testing segment provide a sufficient basis for conducting the endpoint testing and/or the computational route-to-route extrapolations specified in the Tier II testing segment.

3. The nature and scope of any additional work that may be required before Tier II testing and the application of the TCE model for route-to-route extrapolation reporting (e.g., development of additional PK/MECH data, modification to the TCE model).

B. What were the Public Comments on the Tier I Program Review Testing?

EPA received one public comment from the People for the Ethical Treatment of Animals (PETA). The comment was submitted by PETA and on behalf of themselves, the Physicians Committee for Responsible Medicine, the Humane Society of the United States, the Doris Day Animal League, and Earth Island Institute. PETA's comments were favorable on the use of the alternative approach to address data needs utilizing PBPK modeling which could result in a reduction in the number of animals used in toxicity testing to meet EPA's data needs. Although, PETA also stated their belief that the presently available data base for TCE is sufficiently extensive to characterize the toxicity of TCE, and that no additional testing is necessary, PETA did not include comments regarding the scientific merit of the PK/MECH data or PBPK model development for TCE.

EPA appreciates the expressed support for the application of alternative approaches that incorporate PBPK modeling as a means to address data needs for HAP chemicals. Although, computational approaches are an increasingly important tool for EPA to use in addressing data needs, they must be scientifically defensible and rely on the development of PK/MECH data relevant to the modeling approach. Computational dosimetry modeling approaches need critical empirical data from toxicity studies conducted in a scientifically adequate manner. EPA has concluded that the Tier II testing is necessary in this case. EPA's basis for this decision is presented in previous **Federal Register** notices, cited in Unit II.A.

C. What are the Conclusions of the EPA Program Review?

EPA has determined that the Tier I Program Review testing and data from other studies acceptable to EPA can support computational route-to-route dosimetry extrapolations for the endpoints listed in the Tier II testing segment of the ECA. More specifically, EPA has concluded that:

1. The PK/MECH data report and Tier I toxicity studies appear to have been conducted in accordance with the protocols and specifications as described in Appendix C of the ECA.

2. The available study records are sufficient to allow an evaluation of the quality of the studies performed.

3. The TCE PBPK model is appropriately chemical-specific, and suitably based on the current understanding of the kinetics of TCE.

4. The species, dose level, exposure regimens, and vehicles used are relevant for the toxicity data that are the object of the Tier II extrapolations.

5. The Tier I Program Review PK/MECH data demonstrated that periodicity was achieved in the studies that support the model.

EPA has also concluded, that the choice of dose metrics for Tier II computational route dosimetry extrapolations should be revised to correlate with Tier I study findings, and that selection of the dosing regimens for Tier II testing could benefit from predictions derived from the PBPK model for TCE. These changes to the original testing and extrapolation reporting are described in the revised Table 1 (Table 1. (amended)) of this **Federal Register** notice, and will be incorporated into protocol development under Tier II activities. EPA's program review activity, including the findings and conclusions, are described in a report titled: ''Program Review Report on the Enforceable Consent Agreement for 1,1,2-Trichloroethane'' (U.S. EPA, April 21, 2003). This report is available electronically from the e-Docket OPPT–2002–0056.

It is EPA's decision that the HAP Task Force can proceed with Tier II Testing under the schedule set forth in Table 1. of this **Federal Register** notice. The testing schedule corresponds to that originally set forth in the **Federal Register** notice announcing the ECA and Order for TCE, but is modified to include the additional time needed to complete the Program Review segment of the ECA for TCE, which was longer than originally anticipated, plus additional time for Tier II protocol development. Table 1. also identifies additional modifications to Tier II activities to correlate with Tier I study findings. EPA does not consider these modifications of the test schedules or Tier II activities to be significant.

D. What are the Modifications to the ECA for TCE?

This **Federal Register** notice incorporates modifications to the ECA for the TCE test schedule for Tier II ECA activities, clarifies protocol development for Tier II testing, expands consideration for dose metrics to be applied in the Tier II route dosimetry extrapolations and reporting, and identifies a change in signatory companies to the ECA. The testing schedule corresponds to that originally set forth in the **Federal Register** notice announcing the ECA and Order for TCE, but is modified to allow for the time needed to perform the EPA Program Review, which was longer than

anticipated. Additional time was also included in the schedule for Tier II testing protocol development. Footnotes in Table 1. have been revised to address refinements in Tier II protocol development and extrapolation reporting changes identified as modification to Appendix C.5 (General Outline for Route-to-Route Extrapolation Reporting) to correlate with Tier I study findings. Finally, one of the signatory companies to the ECA, Borden Chemicals and Plastics Operating Limited Partnership, is no longer a participant in the ECA, due to bankruptcy. The remaining companies that are signatories of the ECA for TCE have agreed to assume the responsibilities for this change in membership to the HAP Task Force. EPA does not consider these modifications to be significant.

TABLE 1. (AMENDED)—REQUIRED TESTING, TEST STANDARDS, REPORTING AND OTHER REQUIREMENTS FOR 1,1,2-TRICHLOROETHANE

Testing Segment	Required Testing	Test Standard	Deadline for Final Report[1] (Months)
Tier II Testing and/or Extrapolation Reporting	Acute neurotoxicity (drinking water)	§ 799.9620 (as annotated in ECA Appendix D.3)	12
	Acute neurotoxicity route-to-route extrapolation of Tier II drinking water acute neurotoxicity data to inhalation[2]	ECA Appendix C	14
	Subchronic neurotoxicity (drinking water)	§ 799.9620 (as annotated in ECA Appendix D.3)	18
	Subchronic neurotoxicity route-to-route extrapolation of Tier II drinking water subchronic neurotoxicity data to inhalation[2]	ECA Appendix C	21
	Developmental toxicity (drinking water)	§ 799.9370 (as annotated in ECA Appendix D.4)	24
	Developmental toxicity route-to-route extrapolation of Tier II drinking water developmental toxicity data to inhalation[3]	ECA Appendix C	27
	Reproductive toxicity (drinking water)	§ 799.9380 (as annotated in ECA Appendix D.5)	30
	Reproductive toxicity route-to-route extrapolation of Tier II drinking water reproductive toxicity data to inhalation[4]	ECA Appendix C	33
	Immunotoxicity (route-to-route extrapolation of extant oral data in ECA Appendix E.2 to inhalation)[5]	ECA Appendix C	9
	Carcinogenicity (route-to-route extrapolation of extant oral data in ECA Appendix E.3 to inhalation[6]	ECA Appendix C	6

[1]Number of months after the effective date of this **Federal Register** Notice, which announces that EPA has concluded the EPA Program Review, when the final report is due. In addition, every 6 months from the effective date of the Order until the end of the ECA testing program, interim reports describing the status of all testing to be performed under the ECA for TCE must be submitted by the companies to EPA.

[2]Quantitative route-to-route extrapolations based on the Tier II acute and subchronic drinking water neurotoxicity study data, and developed for each of the following dose metrics: Parent compound in venous blood and brain, as maximum concentration (Cmax) and as the area under the time-concentration curve (AUC), and metabolite, as amount metabolized in the liver or brain per day normalized to organ weight.

[3]Quantitative route-to-route extrapolation based on the Tier II drinking water developmental toxicity study data, and developed for each of the following dose metrics: Parent compound in venous blood, as maximum concentration (Cmax) and as the area under the time-concentration curve (AUC), and metabolite, as amount metabolized in the liver per day normalized to liver weight.

[4]Quantitative route-to-route extrapolation based on the Tier II drinking water reproductive effects toxicity study data, and developed for each of the following dose metrics: Parent compound in venous blood, as maximum concentration (Cmax) and as the area under the time-concentration curve (AUC), and metabolite, as amount metabolized in the liver per day normalized to liver weight.

[5]Quantitative route-to-route extrapolation based on the PK/MECH data developed under this ECA and the data of Sanders et al. (1985), and developed for each of the following dose metrics: parent compound in venous blood and spleen, as maximum concentration (Cmax) and as the area under the time-concentration curve (AUC), and metabolite, as amount metabolized in the liver or spleen per day normalized to organ weight.

[6]Quantitative route-to-route extrapolation based on the PK/MECH data developed under this ECA and the data of NCI (1978), and developed for each of the following dose metrics: parent compound in venous blood and liver, as maximum concentration (Cmax) and as the area under the time-concentration curve (AUC), and metabolite, as amount metabolized in the liver per day normalized to liver weight.

List of Subjects

Environmental protection, Hazardous chemicals.

Dated: June 26, 2003.

Philip S. Oshida,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–16927 Filed 7–8–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 27, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0800.

Title: FCC Wireless Telecommunications Bureau Application for Assignment of Authorization and Transfers of Control.

Form No.: FCC Form 603.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 32,151.

Estimated Time Per Response: 1.75 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 36,171 hours.

Total Annual Cost: $7,073,000.

Needs and Uses: FCC Form 603 is a multi-purpose form used to apply for approval of assignment or transfer of control of licenses in the Wireless Radio Services. The data collected on this form is used by the FCC to determine whether the public interest would be served by approval of the requested assignment or transfer. This form is also used to notify the Commission of consummated assignments and transfers of wireless licenses that have previously been consented to by the Commission or for which notification but not prior consent is required. This form is used by applicants/licensees in the Public Mobile Services, Personal Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Fixed Microwave Services, Maritime Services (excluding ships) and Aviation Services (excluding aircraft).

The purpose of the form is to obtain information sufficient to identify the parties to the proposed assignment or transfer, establish the parties basic eligibility and qualifications, classify the filing, and determine the nature of the proposed service. Various technical schedules are required along with the main form applicable to Auctioned Services, Partitioning and Disaggregation, Undefined Geographical Area Partitioning, Notification of Consummation or Request for Extension of Time for Consummation.

The form is being revised to accommodate Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets; additional questions concerning the foreign ownership; and clarifying existing instructions for the general public as noted in the Communications Act of 1934, Section 310(b)(4). There is no change to the estimated average burden or number of respondents.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–17337 Filed 7–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–1812]

The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers That Are Presumed To Possess Market Power in Foreign Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission revises and reissues its list of foreign telecommunications carriers that are presumed to possess market power in foreign telecommunications markets. Several Commission rules incorporate this list by reference. Recently the Commission updated these rules. In addition, carriers' names have changed as a result of a divestiture of national incumbent operators into regional operators. Thus, it was necessary for the Commission to revise and reissue the public notice.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released June 5, 2003. By this Public Notice, the International Bureau revises and reissues the Commission's ''List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets.'' The revised list of carriers reflects any corrections to carrier names that were incorrect or new names now used by the carriers since this public notice was initially released in 1999. This corrected list is identical to the list previously released, except for name changes that occurred as a result of a divestiture of national incumbent operators into regional operators. While the Commission's staff attempts to maintain current information as to the names of carriers on this list, we encourage interested parties to advise the

Commission of future name changes that may occur as a result of divestiture of national incumbent operators into regional operators or for other reasons. This Public Notice also summarizes the relevant rule sections that incorporate this list by reference, including, most recently, Commission rules that govern the licensing of submarine cable systems. *See Review of Commission Consideration of Applications under the Cable Landing License Act,* IB Docket No. 00–106, 16 FCC Rcd 22167 (2001) (*Submarine Cable Landing License Order*), 67 FR 1615 (January 14, 2002).)

The revised list set forth below shall apply for purposes of implementing § 1.767(g)(5) of the rules adopted in 2001. This list shall also continue to apply for purposes of implementing the following Commission rules: § 43.51(b) (involving reporting contracts and concessions), § 63.14 (involving the prohibition on agreeing to accept special concessions), § 63.22(e) (involving the provision of switched basic services over authorized facilities-based private lines), and § 63.23(d) (involving the provision of switched basic services over authorized resold private lines).

Among the rule changes the Commission adopted in the *Submarine Cable Landing License Order* is a ''no special concessions'' rule tailored to submarine cables and applicable to all cable landing licensees authorized after the effective date of the rules. (*See Submarine Cable Landing License Order,* Appendix B (Final Rules), § 1.767(g)(5). For cable landing licenses granted prior to March 15, 2002, all licensees on a cable may jointly file an application with the Commission seeking a modification of the license to substitute the new ''no special concessions'' safeguard for the broader prohibition against exclusive arrangements traditionally imposed on cable landing licensees. (*See Submarine Cable Landing License Order,* 16 FCC Rcd at 22184, para. 33.)

New rule 1.767(g)(5) prohibits these licensees from accepting directly or indirectly from a foreign carrier with market power in one or more of the cable's destination markets a ''special concession'' as specified in the rule. Under new § 1.767(g)(5), a foreign carrier is defined as in § 63.09(d) of the Commission's rules, except that the term also is defined to include any entity that owns or controls a cable landing station in a foreign market. (*See Submarine Cable Landing License Order*, 16 FCC Rcd at 22221, Appendix B (Final Rules), Note to § 1.767 (the terms ''affiliated'' and ''foreign carrier,'' as used in this section, are defined as in § 63.09 except that the term ''foreign carrier'' also shall include any entity that owns or controls a cable landing station in a foreign market).)

For purposes of determining which foreign carriers are the subject of the requirements of § 1.767(g)(5), the new rule provides that licensees may rely on the Commission's ''List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets.'' (*See Submarine Cable Landing License Order*, 16 FCC Rcd at 22215, Appendix B (Final Rules), Note to § 1.767(g)(5).)

The Commission first adopted its list of foreign carriers that are presumed to possess market power in the *ISP Reform Order.* (See *1998 Biennial Regulatory Review—Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket No. 98–148 and CC Docket No. 90–337, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999) (*ISP Reform Order*), 64 FR 34734 (September 28, 1999).) In that proceeding, the Commission modified its rules to remove its requirement that agreements between U.S. telecommunications carriers and foreign carriers that lack market power in the foreign telecommunications market conform to the Commission's international settlements policy (ISP). The Commission's rules include a presumption that a foreign carrier does not possess market power on the foreign end of a U.S. international route if it possesses less than 50 percent market share in each of three relevant foreign product markets: international transport facilities, including cable landing station access and backhaul facilities; intercity facilities and services; and local access facilities and services on the foreign end.

The Commission stated that it would issue a list of carriers that do not qualify for this presumption. U.S. international carriers would be precluded from exchanging traffic outside of the ISP with carriers on the list unless otherwise allowed. (*See List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, 14 FCC Rcd 7038 (1999), 64 FR 34799 (June 29, 1999), Public Notice issuing initial list of foreign carriers presumed to possess market power.) U.S.-authorized carriers would also be precluded from agreeing to accept special concessions (as defined in § 63.14 of the Commission's rules) from carriers on the list unless otherwise allowed under the Commission's rules. The Commission found that this approach best advances the policy of allowing U.S. carriers to enter into arrangements with foreign carriers that lack market power with a minimum of regulatory oversight, while maintaining the ISP for certain arrangements with foreign carriers that possess market power in the foreign market.

The following list specifies particular foreign carriers that do not qualify for the presumption that a foreign carrier does not possess market power on the foreign end of a U.S. international route if it possesses less than 50 percent market share in each of three relevant foreign product markets: international transport facilities, including cable landing station access and backhaul facilities; intercity facilities and services; and local access facilities and services on the foreign end. The list is based on publicly available information, compiled from official sources, including the International Telecommunication Union. The list of ''Dominant Operators'' does not specifically identify all incumbent local exchange carriers that may operate in the destination markets listed below. However, all incumbent local exchange carriers that may operate in the markets are incorporated by reference on the list. (*See infra* ''Additional carriers included on this list.'')

Interested parties may challenge the inclusion or exclusion of any carrier on the list by submitting a petition for declaratory ruling and the appropriate supporting documentation to demonstrate that a carrier included on the list lacks market power or that a carrier not included does not lack market power. This list applies only for purposes of determining those foreign carriers that are subject to our ISP, our rules on providing switched services over private lines, and the No Special Concessions rules for U.S. international common carriers and cable landing licensees. It does not apply for purposes of market power determination under § 63.10 (Regulatory classification of international carriers) or § 63.18 (Contents of applications for international common carriers). The list below will be posted on the International Bureau's World Wide Web site. (*http://www.fcc.gov/ib*).

Destination market	Dominant operators
Afghanistan	Ministry of Communications.
Albania	Albania Telecom.
Algeria	Ministère des Postes et Télécommunications (MPT).
Angola	Angola Telecom.
Antigua and Barbuda	Cable & Wireless.
Argentina	Telcom Argentina S.A., Telefónica de Argentina S.A.
Armenia	Armentel.
Australia	Telstra Corporation.
Austria	Post and Telekom Austria AG (PTA).
Azerbaijan	Ministry of Communication.
Bahamas	Bahamas Telecommunications Corporation (Batelco).
Bahrain	Bahrain Telecommunications Company (BATELCO).
Bangladesh	Bangladesh Telegraph & Telephone Board.
Barbados	Barbados External Telecommunications Ltd. (BET).
Belarus	Belarus Telecom.
Belgium	Belgacom.
Belize	Belize Telecommunications Ltd.
Benin	Office des postes et télécommunications (OPT).
Bermuda	Cable & Wireless Bermuda.
Bhutan	Bhutan Telecom.
Bolivia	Empresa Nacional de Telecomunicaciones S.A.
Bosnia and Herzegovina	Telecom SRPSKE Telekom Republike Srpske.
Botswana	Botswana Telecommunications Corporation (BTC).
Brazil	Embratel.
Brunei	Jabatan Telecom Brunei Darussalam (JTB).
Bulgaria	Bulgarian Telecommunications Company (BTC).
Burkina Faso	Office National des Télécommunications (ONATEL).
Burma	Myanmar Posts & Telecommunications.
Burundi	Office National des Télécommunications (ONATEL).
Cambodia	Directorate of Posts and Telecommunications (DPTK).
Cameroon	Société des Télécommunications Internationales du Cameroun (INTELCAM).
Canada	Aliant Inc., Bell Canada, Manitoba Telecom Services, SaskTel, Telus Communications.
Cape Verde	Cabo Verde Telecom Sarl.
Central African Rep.	Société Centrafricaine des Télécommunications (SOCATEL).
Chad	Société des Télécommunications Internationales du Tchad (TIT).
Chile	CTC.
China	China Telecom, China Netcom.
Colombia	Empresa Nacional de Telecomunicaciones.
Comoros	Société Nationale des Postes et Télécommunications (SNPT).
Congo	Office National des Postes et des Télécommunications (ONPT).
Costa Rica	Instituto Costariccense de Electricidad (ICE).
Côte d'Ivoire	Société Côte d'Ivoire-TELECOM (CI–TELECOM).
Croatia	Croatia Telecom (HT).
Cuba	Empresa Telecomunicaciones de Cuba S.A. (ETECSA).
Cyprus	Cyprus Telecommunications Company.
Czech Rep	SPT Telecom.
Dem. Rep. of Congo	Office Congolais des Postes et des Télécommunications (OCPT).
Denmark	Tele Danmark A/S.
Djibouti	Société Telecom International (STID).
Dominica	Telecommunications of Dominica.
Dominican Republic	Compañía Dominicana de Teléfonos (CODETEL).
Ecuador	Emetel. Andinatel. Pacifictel.
Egypt	Egypt Telecom.
El Salvador	Compañía de Telecomunicaciones de El Salvador.
Equatorial Guinea	La Sociedad Anonima de Telecomunicaciones de la Republica.
de Guinea	Guinea Ecuatorial (GETESA).
Eritrea	Telecommunications Services of Eritrea (TSE).
Estonia	Estonian Telephone Company.
Ethiopia	Ethiopian Telecommunications Corporation (ETC).
Finland	TeliaSonera.
France	France Télécom.
Gabon	Télécommunications Internationales Gabonaises (TIG).
Gambia	Gambia Telecommunications Company, Ltd. (GAMTEL).
Georgia	Georgia Telecom (GTC).
Germany	Deutsche Telekom AG.
Ghana	Ghana Telecommunications Company.
Greece	Hellenic Telecommunications Organization (OTE).
Grenada	Grenada Telecommunications.
Guatemala	Telecomunicaciones de Guatemala (Telgua).
Guinea	Société des Télécommunications de Guinée (SOTELGUI).
Guinea-Bissau	Companhia de Telecomunicaçoes da Guiné-Bissau, sarl (Guiné-Telecom).

Destination market	Dominant operators
Guyana	Guyana Telephone and Telegraph Ltd.
Haiti	Telecommunications d'Haiti S.A.M.
Holy See (Vatican City)	Telecom Italia.
Honduras	Empresa Hondureña de Telecomunicaciones.
Hong Kong	Pacific Century CyberWorks HKT.
Hungary	Hungarian Telecommunication Co. (MATAV).
Iceland	Landssiminn.
India	Videsh Sanchar Nigam Limited (VSNL).
Indonesia	PT Indosat.
Iran	Telecommunciations Company of Iran.
Iraq	Ministry of Telecommunications.
Ireland	Telecom Eireann.
Israel	Bezeq.
Italy	Telecom Italia.
Jamaica	Cable & Wireless Jamaica.
Japan	KDDI.
	Nippon Telegraph & Telephone Corporation (NTT).
Jordan	Jordan Telecommunications Corporation (JTC).
Kazakhstan	Kazakhtelecom.
Kenya	Telkom Kenya Limited.
Kiribati	Telecom Services Kiribati Limited.
Korea (South)	Korea Telecom.
Korea (North)	Pycompute Pyongyang.
Kuwait	Ministry of Communications.
Kyrgyszstan	Kyrgyztelecom.
Laos	Enterprise of Telecommunications Lao (ETL).
	Lao Shinawatra Telecom Company.
Latvia	Lattelekom.
Lebanon	Ministry of Posts and Telecommunications.
Lesotho	Lesotho Telecommunications Corporation (LTC).
Liberia	Liberia Telecommunications Corporation.
Libya	General Post and Telecommunications Company (GPTC).
Liechtenstein	Swiss Telecom PTT.
Lithuania	Lietuvos Telekom.
Luxembourg	Luxembourg PTT.
Macedonia	Makedonski Telecom (MT).
Madagascar	Telecom Malagasy (TELMA).
Malawi	Malawi Posts and Telecommunications Corporation (MPTC).
Malaysia	Telecom Malaysia.
Maldives	DHIRAAGU.
Mali	Société des Télécommunications du Mali (SOTELMA).
Malta	Telemalta Corporation.
Marshall Islands	National Telecommunications Authority.
Mauritania	Office des Postes et des Télécommunications (OPT).
Mauritius	Mauritius Telecom Limited.
Mayotte	France Télécom.
Mexico	Telefonos de Mexico (TelMex).
Micronesia	FSM Telecommunications.
Moldova	Moldtelecom.
Monaco	France Télécom.
Mongolia	Mongolia Telecommunications Company.
Morocco	Maroc Telecom.
Mozambique	Telecomunicaçoes de Moçambique.
Namibia	Telecom Namibia.
Nauru	Nauru Telcom.
Nepal	Nepal Telecommunications Corporation.
Netherlands	KPN Telecom N.V.
Netherlands Antilles	Antelecom N.V.
New Zealand	Telecom Corporation of New Zealand Ltd. (TCNZ).
Nicaragua	Enitel.
Niger	Société nigérinne des télécommunications (SONITEL).
Nigeria	Nigerian Telecomunications Limited.
Norway	Telenor AS.
Oman	General Telecommunications Organization (GTO).
Pakistan	Pakistan Telecommunications.
Palau	Palau National Communications Corporation (PNCC).
Palestine	Palestine Telecommunications Company P.L.C. (PALTEL).
Panama	INTEL.
Papua New Guinea	Post & Telecommunications Corporation.
Paraguay	Antelco.
Peru	Telefónica del Peru.
Philippines	Philippines Long Distance Telephone Company (PLDT).
Poland	Telekomunikacja Polska S.A.
Portugal	Portugal Telecom S.A.

Destination market	Dominant operators
Qatar	Qatar Public Telecommunications Corporation.
Réunion	France Télécom.
Romania	Romtelecom.
Russia	Rostelecom.
Rwanda	Rwandatel S.A. (RWANDATEL).
St. Kitts and Nevis	Cable & Wireless.
St. Lucia	Cable & Wireless.
St. Vincent and the Grenadines	Cable & Wireless.
San Marino	Telecom Italia.
Sao Tomé & Principe	Companhia Santomense de Telecomunicações, s.a.r.l. (CST).
Saudi Arabia	Saudi Telecommunications Company.
Senegal	Société Nationale des Télécommunications du Sénégal (SONATEL).
Serbia and Montenegro	Serbija Telecom.
Seychelles	Cable & Wireless (Seychelles) Ltd.
Sierra Leone	Sierra Leone Telecommunications Company (SIERRATEL).
Singapore	Singapore Telecom.
Slovakia	Slovak Telecom (ST).
Slovenia	Telekom Slovenije (TS).
Solomon Islands	Solomon Telekom Company.
Somalia	Ministry of Posts and Telecommunications.
South Africa	Telkom SA Limited.
Spain	Telefónica.
Sri Lanka	Sri Lanka Telecom.
Sudan	Sudan Telecommunications Company Ltd. (Sudatel).
Suriname	Telesur.
Swaziland	Swaziland Posts and Telecommunications Corporation (SPTC).
Sweden	TeliaSonera.
Switzerland	Swisscomm.
Syria	Syrian Telecommunications Establishment (STE).
Taiwan	Chunghwa Telecom.
Tajikistan	Tajiktelecom.
Tanzania	Tanzania Telecommunications Corporation Limited (TTCL).
Thailand	Communications Authority of Thailand (CAT).
Togo	Société des Télécommunications du Togo (TOGO TELECOM).
Trinidad and Tobago	Telecom Services of Trinidad and Tobago.
Tunisia	Tunisie Telecom.
Turkey	Turk Telekomunikasyon A.S.
Turkmenistan	Turkmentelecom.
Tuvalu	Ministry of Labor, Works and Communications.
Uganda	Uganda Telecommunications Limited (UTC).
Ukraine	Ukrtelecom.
United Arab Emirates	The Emirates Telecommunications Corp. Ltd. (Etisalat).
United Kingdom	British Telecom.
Uruguay	Administración Nacional de Telecomunicationes.
Uzbekistan	Halqaro Telecom.
Vanuatu	Vanuatu Telecom.
Venezuela	Compaŋía Anónima Nacional Telífonos de Venezuela.
Vietnam	Viet Nam Post and Telecommunications Corporation (VNPT).
Western Samoa	Postal and Telecommunications Department.
Yemen	Yemen International Telecommunications Company (TELEYEMEN).
Zambia	Zambia Telecommunications Company Limited (Zamtel).
Zimbabwe	Posts and Telecommunications Corporation (PTC).

Additional Carriers Included on This List

All incumbent local exchange carriers in the destination markets above.

All carriers that control, are controlled by, or are under common control with, a carrier listed above in the particular destination market.

Federal Communications Commission.

James Ball,

Chief, Policy Division, International Bureau.

[FR Doc. 03–17245 Filed 7–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011523–003.

Title: WWL/HUAL Space Charter Agreement.

Parties: Wallenius Wilhelmsen Lines AS, HUAL AS.

Synopsis: The agreement deletes Article 5.5, which gives the parties the authority to voluntarily agree on rates, rules, and conditions of their respective services.

Agreement No.: 011689–005.

Title: Zim/CSCL Space Charter Agreement.

Parties: Zim Israel Navigation Company, Ltd. (''Zim''), China Shipping Container Lines Co., Ltd. (''CSCL'').

Synopsis: The amendment deletes a vessel string from the agreement and revises CSCL's allocation on Zim's ZCS service and Zim's allocation on CSCL's AAS service.

Agreement No.: 200813–002.

Title: Broward/Universal Marine Terminal Agreement.

Parties: Broward County (Florida), Universal Maritime Service Corporation.

Synopsis: The amendment reflects a change of party through assignation and a change in demise. The agreement runs through September 28, 2013.

Dated: July 3, 2003.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–17399 Filed 7–8–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System

TIME AND DATE: 2:30 p.m., Friday, July 11, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW., Washington, DC 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may *register on-line.* You may pre-register until close of business July 10, 2003. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information. *Privacy Act Notice:* Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Capital proposals related to the new Basel accord.

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: July 3, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–17423 Filed 7–3–03; 4:22 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–51–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Automated Management Information System (MIS) for Diabetes Control Programs (OMB Control No. 0920–0479)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). CDC has implemented a Management Information System (MIS) and federally sponsored data collection requirement from all CDC funded diabetes control programs. Diabetes is the sixth leading cause of death in the United States contributing to more than 200,000 deaths each year. An estimated 11.1 million people in the United States have been diagnosed with diabetes and an estimated 5.9 million people have undiagnosed diabetes. CDC's Division of Diabetes Translation (DDT) provides funding to health departments of States and territories to develop, implement, and evaluate systems-based Diabetes Control Programs (DCPs). DCPs are population-based, public health programs that design, implement and evaluate public health prevention and control strategies that improve access to and quality of care for all, and reach communities most impacted by the burden of diabetes (*e.g.*, racial/ethnic populations, the elderly, rural dwellers and the economically disadvantaged). Support for these programs is a cornerstone of the DDT's strategy for reducing the burden of diabetes throughout the nation. The Diabetes Control Program is authorized under sections 301 and 317(k) of the Public Health Service Act (42 U.S.C. 241 and 247b(k)).

In accordance with the original OMB approval (July 20, 2002), this extension will continue to expand and enhance the technical reporting capacity of the MIS. The MIS is a web-based, password access protected repository/technical reporting system that replaced an archaic paper reporting system. The MIS allows the accurate, uniform, and complete collection of diabetes program progress information using the Internet. The MIS has improved upon the old data collection system by:

- Improving accountability;
- Shortening the information cycle;
- Eliminating non-standard reporting;
- Minimizing unnecessary duplication of data collection and entry;
- Reducing the reporting burden on small state organizations;
- Using plain, coherent, and unambiguous terminology that is understandable to respondents;
- Implementing a consistent system for progress reporting and record keeping processes;
- Identifying the retention periods for record keeping requirements;

• Utilizing modern information technology for data collection and transfer;

• Significantly reducing the amount of paper reports that diabetes control programs are required to submit.

The MIS has allowed CDC to more rapidly respond to outside inquiries concerning a specific diabetes control activity occurring in the state diabetes control programs. The data collection requirement has formalized the format and contents of diabetes data reported from the DCPs and provides an electronic means for efficient collection and transmission to the CDC headquarters.

The MIS has facilitated the staff's ability at CDC to fulfill its obligations under the cooperative agreements; to monitor, evaluate, and compare individual programs; and to assess and report aggregate information regarding the overall effectiveness of the DCP program. It has also supported DDT's broader mission of reducing the burden of diabetes by enabling DDT staff to more effectively identify the strengths and weaknesses of individual DCPs and to disseminate information related to successful public health interventions implemented by these organizations to prevent and control diabetes. Implementation of the MIS has provided for efficient collection of state-level diabetes program data. The annual burden for this data collection is 236 hours.

Respondents	No. of respondents	No. of responses/ respondent	Average burden/response (in hours)
State Program Control Officers	59	1	4

Dated: July 2, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–17302 Filed 7–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–53–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Aggregate Reports for Tuberculosis Program Evaluation (OMB No. 0920–0457)—Reinstatement without change—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC is requesting OMB approval to reinstate without change the Aggregate Reports for Tuberculosis Program Evaluation. This request is for a three-year extension of clearance. There are no revisions to the report forms, data definitions, or reporting instructions.

To ensure the elimination of tuberculosis in the United States, key program activities, such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected and providing therapy for latent tuberculosis infection, must be monitored. In 2000, CDC implemented two program evaluation reports for annual submission: Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection (OMB No. 0920–0457). The respondents for these reports are the 68 state and local tuberculosis control programs receiving federal cooperative agreement funding through DTBE. These reports replaced two, twice-yearly program management reports in the Tuberculosis Statistics and Program Evaluation Activity (OMB 0920–0026): Contact Follow-up (CDC 72.16) and Completion of Preventive Therapy (CDC 72.21). The replacement reports emphasized treatment outcomes, high-priority target populations vulnerable to tuberculosis, and programmed electronic report entry and submission through the Tuberculosis Information Management System (TIMS).

No other Federal agency collects this type of national TB data, and the Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection are the only data source about latent tuberculosis infection for monitoring national progress toward tuberculosis elimination.

In addition to providing ongoing assistance about the preparation and utilization of these reports at the local and state levels of public health jurisdiction, CDC held three national training workshops about the reports and will convene additional workshops when requested by the respondents. CDC also provides respondents with technical support for the TIMS software. The annual burden for this data collection is 204 hours.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hours)
State & Local TB Control Programs	68	1	90/60
State & Local TB Control Programs	68	1	90/60

Dated: July 2, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–17303 Filed 7–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03118]

Cooperative Agreement for the Development and Evaluation of Medical Laboratory Quality Indicators and the Monitoring of Voluntary Practice Guidelines as a Model; Notice of Availability of Funds

Application Deadline: August 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, 42 U.S.C. 247b(k)(2), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement for a program to develop and evaluate appropriate medical laboratory quality indicators and to evaluate the implementation of voluntary laboratory practice guidelines. This program addresses the ''Healthy People 2010'' focus area of Access to Quality Health Services.

The purpose of the program is twofold:

(1) Collaborate with a broad spectrum of laboratories (*e.g.*, hospital, public health, doctor's office, and local clinic), care providers and payers, and public health to develop and evaluate appropriate laboratory quality indicators and to develop a plan for collection and monitoring of the indicators.

(2) Recently collected data show that a significant number of laboratories do not follow professional practice guidelines in the areas of antimicrobial susceptibility testing and coagulation. The cooperative agreement recipient will further evaluate implementation of voluntary practice guidelines and assess the barriers to their implementation. This activity may be considered a subcomponent of the first activity and serve as a model for some of the quality indicators.

Measurable outcomes of the program will be in alignment with the following performance goal for the Public Health Practice Program Office: Increase the number of frontline public health workers at the state and local level that are competent and prepared to respond to bioterrorism, other infectious disease outbreaks, and other public health threats and emergencies, and prepare frontline state and local health departments and laboratories to respond to current and emerging public health threats.

C. Eligible Applicants

Applications may be submitted by:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Faith-based organizations.
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Applications from the above entities are being solicited because they represent organizations that have sufficient background, experience, and current knowledge of laboratory testing. These entities include institutions or organizations with knowledge and experience in public health and medical laboratory testing who are also knowledgeable about current regulatory and voluntary laboratory standards, quality assurance, the use of quality indicators to measure performance and to identify areas in laboratory testing that are error-prone, and who can evaluate these findings in the broader context of the impact on patient health and safety. In addition, these entities will be able to collaborate and work with existing laboratory and health care networks, professional organizations, and others in the field of laboratory medicine to collect data and information on laboratory quality issues and implementation of laboratory standards.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds: Approximately $125,000 is available in FY 2003 to fund one award ranging from $100,000 to $150,000. It is expected that the award will begin on or about September 15, 2003 and the project period will consist of one 12-month budget period. Funding estimates may change.

Recipient Financial Participation: No matching funds are required for this program.

Funding Preferences: Preference may be given to a State health department clinical laboratory quality assurance or evaluation program or other organization with existing laboratory networks (data collection networks comprised of clinical and public health laboratories that periodically monitor and report on issues related to the delivery of laboratory medicine and quality assurance programs associated with them).

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities:

a. Provide leadership in developing and evaluating laboratory quality indicators in collaboration with representatives from laboratories, care providers, payers, and public health.

b. Provide leadership in the development of an implementation plan for the use of quality indicators to collect and monitor data from a broad spectrum of laboratories (*e.g.*, hospitals, public health sites, doctors' offices and local clinics).

c. Test the plan developed in (b) above by collecting indicator measurement data from laboratories.

d. Evaluate the implementation of selected voluntary laboratory practice guidelines and identify and assess barriers to guideline implementation in various types of laboratories.

e. Collect, enter, analyze, and summarize the data in a manner that is statistically valid and, whenever necessary, ensures participant confidentiality.

f. Distribute reports to participants for self-evaluation and improvement, and make information available to other laboratories nationwide, as appropriate.

g. Develop recommendations for potential mechanisms to overcome barriers and improve the implementation of quality indicators and voluntary laboratory practice guidelines.

h. Prepare manuscripts for peer-review publications.

2. CDC Activities:

a. Assist in identifying quality indicators and voluntary laboratory practice guidelines for evaluation.

b. Facilitate collaboration with external partners who volunteer to work

with the recipient and CDC in developing laboratory quality indicators and identifying practice guidelines.

c. If requested, assist in the development of an implementation plan for the use of the quality indicators.

d. If requested, provide technical assistance with the development of data collection instruments.

e. Collaborate in analyzing the data and information collected and in preparing written summaries.

f. Work with the recipient to identify barriers to using laboratory practice guidelines and to develop recommendations for potential mechanisms to overcome these barriers.

g. Assist in the preparation of manuscripts for peer-reviewed publications.

F. Content

Applications: The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 pages, double-spaced, printed on one side, with one-inch margins and unreduced 12-point font, and on 8.5″ x 11″ paper.

The narrative should consist of goals and objectives, a plan of operation, project management and staffing, an evaluation plan, and proposed budget for carrying out the recipient activities in light of the evaluation criteria as described below.

G. Submission and Deadline

Application Forms: Submit the signed original and two copies of [PHS 5161–1 (OMB Number 0920–0428)]. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address: The application must be received by 4 p.m. Eastern Time August 8, 2003. Submit the application to: Technical Information Management-PA#03118, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt: A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline: Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application: Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Plan of Operation (30 Points):

a. The extent to which the applicant describes the steps to be taken in the planning and implementation of the proposed cooperative agreement.

b. The extent to which the applicant describes the methods to be used to carry out the responsibilities of the proposed cooperative agreement, including the ability to provide the representative participants in the laboratory groups with which they will collaborate.

2. Project Management and Staffing (30 Points):

a. The extent to which the applicant describes their ability to provide staff, knowledge, expertise, and other resources required to perform the responsibilities in this project.

b. The extent to which the applicant describes their qualifications, time allocations of key personnel to be assigned to this project, facilities and equipment, and other resources available for performance of this project.

3. Goals and Objectives (20 Points):

a. The extent to which the applicant describes its understanding of the objectives of this project, the relevance of its proposal to the stated objectives, and any unique characteristics of populations to be studied.

b. The extent to which the applicant's goals and objectives are time-phased, measurable, specific, and achievable.

4. Evaluation Plan (20 Points):

The extent to which the applicant describes their schedule for accomplishing the activities to be carried out in this project and methods for evaluating the accomplishments.

5. Proposed Budget (reviewed but not scored): The extent to which the proposed budget is reasonable, clearly justified, and consistent with the intended use of funds.

6. Performance Goals (reviewed but not scored): The extent to which the application is consistent with the performance goals stated in the purpose section of this announcement.

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements: Provide CDC with original plus two copies of:

1. Semiannual progress reports, which will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements: The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC web site.

AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Deborah Workman, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2085, E-mail address: *atl7@cdc.gov.*

For program technical assistance, contact: Devery Howerton, Ph.D., Chief, Laboratory Practice Evaluation and Genomics Branch, Division of Laboratory Systems, CDC Public Health Practice Program Office, 4770 Buford Highway, NE., Mailstop G–23, Atlanta, GA 30341–3717, *Telephone:* (770) 488–8126, E-mail: *dhowerton@cdc.gov.*

Dated: July 1, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–17308 Filed 7–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03119]

Enhancing Testing Practices in the Clinical Laboratory by Developing Specific Training Activities for Medical Technologists, Medical Laboratory Technicians, and Pathologists; Notice of Availability of Funds

Application Deadline: August 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, 42 U.S.C. 247b(k)(2), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year FY 2003 funds for a cooperative agreement program for Enhancing Testing Practices in the Clinical Laboratory by Developing Specific Training Activities for Medical Technologists (MT), Medical Laboratory Technicians (MLT), and Pathologists. This program addresses the ''Healthy People 2010'' focus areas of: Access to Quality Health Services, and Public Health Infrastructure.

The purpose of the program is to enhance laboratory testing practices and the quality of laboratory testing in the United States. These enhancements in testing practices and the quality of laboratory testing will be related to areas of public health significance such as, antimicrobial susceptibility testing, human immunodeficiency virus (HIV) rapid testing, testing for genetic disorders, chemical terrorism events, other diseases of public health importance, and the regulations, (*i.e.*, Clinical Laboratory Improvement Amendments of 1988 (CLIA)) governing laboratory testing. In addition to enhancing the quality of laboratory testing, the cooperative agreement will also evaluate the training received by laboratory MTs, MLTs, and pathologists to ensure appropriate training efforts are being developed and targeted effectively to the work force of laboratorians located in clinical laboratories across the United States.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Public Health Practice Program Office: ''Increase the number of frontline public health workers at the state and local level that are competent and prepared to respond to bioterrorism, other infectious disease outbreaks, and other public health threats and emergencies and prepare frontline state and local health departments and laboratories to respond to current and emerging public health threats.

C. Eligible Applicants

Applications may be submitted by:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Faith-based organizations.

Applications from the above referenced entities are being solicited because they represent organizations that have sufficient background, experience, and current knowledge of testing in the nation's clinical laboratories, already have in place an established training system for laboratorians that will reach laboratorians across the nation, have an established network of laboratories that provide unique opportunities for continued learning to constituents in all 50 states, have an established training system to enhance laboratory infrastructure with regard to testing, identifying, and reporting potential disease threats, and have a broad outreach to the medical laboratory professionals. These organizations are being solicited because they have a variety of established methods for delivery of laboratory training even in remote areas.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $150,000 is available in FY 2003 to fund approximately one award. It is expected that the award will be $150,000, ranging from $125,000 to $175,000. It is expected that the award will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of up to three budget years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

Preference may be given to organizations having established medical laboratory training systems that offer a variety of methods to conduct training related to a large variety of subject matter, consistent with those disease threats of public health significance, and that would have a broad outreach to the medical laboratory community that would provide an end result of enhancing laboratory infrastructure.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient

will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Provide leadership in evaluating the knowledge of clinical laboratory professionals regarding antimicrobial susceptibility testing.

b. Develop an evaluation protocol to determine gaps in knowledge associated with susceptibility testing.

c. Determine if laboratory professionals understand why susceptibility testing is necessary and the implications associated with not performing this type of testing. Develop training and education programs and related materials based on up-to-date laboratory procedures.

d. Implement training and education programs to resolve the knowledge gaps and apply evaluation model to ensure laboratory professionals have received appropriate training, knowledge gaps are resolved, and that knowledge is retained over a specific time period.

e. Provide leadership in developing, implementing, and evaluating training and education programs associated with HIV Rapid Testing.

f. Determine if laboratory professionals know how to perform HIV rapid testing, what algorithm should be applied to results obtained from rapid testing, *i.e.*, how does HIV Rapid Testing affect the current testing algorithm in the United States, as well as, how rapid testing performed in the international laboratory may affect rapid testing in the United States.

g. Provide leadership in developing, implementing, and evaluating training and education programs associated with performing tests to detect chemical terrorism events. Recipient would determine among the clinical laboratory professionals, how many professionals are knowledgeable in detecting chemical terrorism agents and, even if knowledgeable, does their laboratory have the capacity to perform testing.

h. Evaluate the knowledge of laboratory professionals concerning their understanding of DNA testing and the relationship to identification of genetic disorders.

i. Develop and implement training programs for laboratory professionals to increase the awareness of genetics testing in their laboratory and how the testing results assist the clinician in the diagnosis of genetic disorders in their patient, *i.e.*, inherited or mutated disorders.

j. Provide leadership in developing, implementing, and evaluating training and education programs related to CLIA. Ensure that laboratory professionals have received adequate information and are aware of the impact of CLIA regulations on the day-to-day operation of their laboratory.

k. Access information obtained from the CDC sponsored Quality Institute Conference to develop strategies that can be used to improve quality assurance activities, use of quality control materials, recognition of where most testing errors may be occurring, and issues related to point of care testing. It may be necessary for the recipient to form focus groups of experts to discuss the information from the conference associated with these issues to determine possible future recommendations. This may include developing a set of indicators for quality laboratory testing and testing services against which changes in the safety, effectiveness, timeliness, and adequacy of service can be measured.

2. CDC Activities

a. If requested, senior staff will provide consultation and technical assistance in the planning, implementation, and evaluation, of program activities.

b. Senior staff will provide the most up to date scientific information related to antimicrobial susceptibility testing that would assist grantee in developing the appropriate training and education programs.

c. Senior staff will provide consultation and technical assistance related to HIV Rapid Testing and any published reports or other scientific information related to rapid testing that would assist grantee in understanding the possible impact of rapid testing in the United States, and how rapid testing has been performed in international laboratories.

d. Senior staff in the division would provide any up to date genetics testing information, use of genetics quality assurance materials, or other information grantee would find useful in developing training and education programs related to genetics testing.

e. Senior divisional staff would assist the grantee in collaborating with other organizations, other CDC staff, and obtaining useful information regarding testing for chemical terrorism agents that could be useful in developing, implementing, and evaluating training and education programs for chemical terrorism agent testing.

f. Provide current information and experienced senior staff that could assist grantee in preparing training and education programs concerning CLIA regulations and the impact on laboratory testing.

g. Provide information from the CDC sponsored Quality Institute Conference. Senior staff would assist grantee in establishing any expert focus groups from whom strategies and recommendations could be developed, *e.g.*, assistance might be related to helping establish collaborations with world expert scientists who may participate on focus group panels.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 pages, double-spaced, printed on one side, with one inch margins, and unreduced 12-point font.

The narrative should consist of goals and objectives, methods and technical approach, project management and staffing, evaluation plan, and proposed budget for carrying out the recipient activities consistent with the criteria listed in the evaluation criteria section of this announcement.

The plan and methods should address activities to be conducted over the entire three-year project period. Narrative should include a detailed plan for the first year and a brief plan for years two through three.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428.) Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time August 8, 2003. Submit the application to: Technical Information Management—PA#03119, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Methods and Technical Approach (30 Points)

a. The extent to which the applicant's proposal describes the approach taken in the planning and implementation of the proposed cooperative agreement.

b. The extent to which the applicant describes the methods to be used to carry out the responsibilities of the proposed cooperative agreement.

2. Project Management and Staffing (30 Points)

a. The extent to which the applicant describes their ability to provide staff, knowledge, expertise, and other resources required to perform the responsibilities associated with the project.

b. The extent to which the applicant describes their qualifications, time allocations of key personnel to be assigned to this project, facilities and equipment, and other resources available for performance of this project.

3. Goals and Objectives (20 Points)

a. The extent to which the applicant describes their understanding of the objectives of the project and the relevance of their proposal to the stated objectives, including specific outcomes.

b. The extent to which the applicant describes objectives that are specific, measurable, and achievable, including a reasonable schedule for implementation.

4. Evaluation Plan (20 Points)

The extent to which the applicant describes a schedule for accomplishing the activities related to this project and a plan for evaluating their accomplishments.

5. Budget (Reviewed, But Not Scored)

The extent to which the budget is appropriate, reasonable, justified, and consistent in relation to the activities proposed.

6. Performance Measures (Reviewed, But Not Scored)

The extent to which the proposed activities relate to the PHPPO performance goals listed in the purpose section of this announcement.

7. Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site:

AR9 Paperwork Reduction Act Requirements

AR10 Smoke Free Workplace Requirements

AR11 Health People 2010

AR12 Lobbying Restrictions

AR15 Proof of Non-Profit Status

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

For business management and budget assistance, contact: Deborah Workman, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2085, E-mail address: *atl7@cdc.gov*.

For program technical assistance, contact: William O. Schalla, M.S., Associate Director for Program and Finance, Division of Laboratory Systems, Public Health Practice Program Office, 4770 Buford Hwy., NE., Atlanta, GA 30341–3717, Telephone: (770) 488–8098, E-mail: *wschalla@cdc.gov*.

Dated: July 1, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–17307 Filed 7–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03117]

Initiative To Integrate Clinical Laboratories in Public Health Laboratory Testing; Notice of Availability of Funds

Application Deadline: August 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, 42 U.S.C. 247b(k)(2), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program regarding an Initiative to Integrate Clinical Laboratories in Public Health Testing. This program addresses the ''Healthy People 2010'' focus areas of Access to Quality Health Services, and Public Health Infrastructure.

The purpose of the program is to demonstrate the potential ways in which clinical laboratories may be better prepared to conduct public health related testing and participate in the public health system. Activities must revolve around national priorities for public health testing, such as those related to antimicrobial susceptibility, hepatitis C virus, HIV/AIDS, rapid HIV testing, foodborne diseases, sexually transmitted diseases, West Nile Virus, and other diseases of public health significance. Specifically, activities should center on investigating shortcomings in the delivery of medical and public health laboratory services, creating and demonstrating new approaches to create and implement voluntary laboratory practice standards, assessing the factors that impact why voluntary standards are or are not followed by clinical laboratories, training clinical laboratorians to better understand and adhere to voluntary national guidelines for testing and, as applicable, reporting results to public health authorities in the areas listed above. To the extent possible, the investigator(s) should demonstrate the possibilities for conducting some of the above activities in regional (inter-state) settings, and possibly in collaboration with Indian Health Service (IHS) clinical laboratories.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Public Health Practice Program Office: Increase the number of frontline public health workers at the state, tribal and local level that are competent to respond to bioterrorism, other infectious disease outbreaks, and other public health threats and emergencies, and prepare frontline state and local health departments and laboratories to respond to current and emerging public health threats.

C. Eligible Applicants

Applications may be submitted by:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Research institutions
- Faith-based organizations
- State, tribal, and local governments

or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)

Consideration will be given to those entities that are expected to have sufficient resources in terms of expertise in public health laboratory testing and medical microbiology to investigate and determine the influence on the delivery of public health laboratory testing. Important resources include standing advisory organizations composed of public health and private laboratorians, access to local and national subject matter experts, and demonstrated credibility in building laboratory partnerships.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds: Approximately $200,000 is available in FY 2003 to fund approximately one award. It is expected that the average award will be $200,000, ranging from $180,000 to $220,000. It is expected that the award will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of up to three budget years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation: Matching funds are not required for this program.

Funding Preferences: Funding preferences will be given to those entities that have demonstrated significant expertise in microbiology and public health testing and that have available resources that can be leveraged. Important resources include standing advisory organizations composed of public health and private laboratorians, access to local and national subject matter experts, and demonstrated credibility in building laboratory partnerships.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and 2. Optional Recipient Activities, and CDC will be responsible for the activities listed in 3. CDC Activities.

1. Required Recipient Activities:

(a) Collaborate with CDC, including subject matter experts, to determine specific programs (STDs, antimicrobial susceptibility testing, etc.) that could be selected as the best models for demonstrating the local and regional benefits of improved integration of clinical laboratories into the delivery of testing that has public health implications.

(b) Identify training needs and work with laboratory training experts, including the American Society for Clinical Pathology (ASCP) and the National Laboratory Training Network (NLTN), and conduct training to improve laboratory practices in areas of national priority, as mentioned in the purpose section of this announcement. To the extent possible, all training should be evaluated for its impact on knowledge and practices.

2. Optional Recipient Activities:

(a) Select ways to link clinical laboratories into the public health system using communication and promotion, which may include newsletters, e-mails, websites, teleconferences, site visits, *etc.*

(b) Determine factors that affect adherence to voluntary guidelines, such as the National Committee for Clinical Laboratory Standards (NCCLS) guidelines for antimicrobial susceptibility testing, or CDC Morbidity and Mortality Weekly Reports (MMWR) Recommendations and Reports, or locally derived laboratory practice standards.

(c) Work with local and national stakeholders to identify the need for

additional laboratory practice guidelines and then, through a consensus process, draft and implement needed guidelines.

(d) Determine the factors that influence the delivery of medical and public health laboratory testing services. This may involve providers (laboratorians) and/or users (physicians and medical staff) of these testing services.

3. CDC Activities:

(a) Provide assistance as requested, especially subject matter expertise on specific public health programs that depend upon laboratory testing.

(b) Provide, if requested, access to and technical support for the National Laboratory Database, a searchable index of clinical and public health laboratories, which provides testing capabilities and contact information.

(c) If requested, assist with survey design, validation and statistical analysis.

(d) Provide graphic art support, as requested.

(e) Make available consultation on performance of outcomes assessments, including training and any other systematic interventions.

(f) Collaborate to leverage findings through partnerships with the NLTN, Association of Public Health Laboratories, the ASCP, and others.

(g) Assist, if requested, in the development of a study protocol for review by all cooperating partnership institutions participating in the project.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 pages, double-spaced, printed on one side, with one inch margins, and unreduced 12-point font.

The narrative should consist of Background (including relevant activities by the recipient), Plan, Objectives, Methods, Evaluation and Budget.

The plan should address activities to be conducted over the entire three year project period. The plan for year one should be detailed, while the plan can be brief for years two through three.

G. Submission and Deadline

Application Forms: Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address: The application must be received by 4 p.m. Eastern Time, August 8, 2003. Submit the application to: Technical Information Management—PA#03117, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

Deadline: Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline. Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application: Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Methods (30 points): The extent to which the applicant's proposal demonstrates the necessary approaches to be used in accomplishing the activities.

2. Objectives (20 points):

a. The applicant's proposal should describe program objectives that fit the activities in the application, including specific outcomes.

b. The extent to which the applicant describes objectives that are specific, measurable, and feasible, including a reasonable schedule for implementation.

3. Plan (20 points):

a. The extent to which the proposed plan demonstrates the applicant's understanding of the issues.

b. The extent to which the applicant describes a proposed plan for collaboration with CDC to accomplish the proposed activities.

c. The extent to which the proposed activities are capable of achieving the intent of this program announcement.

d. The plan should address activities to be conducted over the entire three-year project period.

5. Evaluation (20 points): The quality of the applicant's plan for evaluating the proposed program activities.

6. Background (10 points):

a. The applicant's proposal should demonstrate an understanding of the need to better integrate activities between public health laboratories and private, clinical laboratories.

b. The importance of the chosen public health problem(s) should be clearly elaborated and the relevance to CDC goals should be clarified.

7. Budget (reviewed, but not scored): The extent to which the budget is appropriate, reasonable, justified, and consistent in relation to the activities proposed.

8. Performance Goals (reviewed but not scored): The extent to which the application the performance goals listed in the purpose section of this announcement.

9. Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements: Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will

serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements: The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC web site.

AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Deborah Workman, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2085, E-mail address: *atl7@cdc.gov.*

For program technical assistance, contact: J. Rex Astles, Ph.D., Office of Laboratory Systems Development, Division of Laboratory Systems (Mail Stop G–25), CDC Public Health Practice Program Office, 4770 Buford Hwy., NE., Atlanta, GA 30341–3717, Telephone: (770) 488–8052, E-mail address: *jastles@cdc.gov.*

Dated: July 1, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–17305 Filed 7–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04009]

Viral Hepatitis Integration and Intervention Projects; Notice of Availability of Funds

Application Deadline: October 7, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(1) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 241(k) and 247b(k)(1) and 247(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for Viral Hepatitis Integration and Intervention Projects. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases.

The purpose of this program is to (1) improve the delivery of existing viral hepatitis prevention services in programs known to serve adults and adolescents at high risk for infection (*e.g.* Sexually Transmitted Disease (STD) clinics, Human Immunodeficiency Virus (HIV) counseling and testing sites, health care programs serving correctional facilities, primary health care settings, substance abuse prevention or treatment centers); (2) evaluate the effectiveness of different strategies to deliver recommended hepatitis preventive services (*e.g.* vaccination, testing and counseling, receipt of test results, and medical and other appropriate services for infected persons); (3) evaluate the impact of integration of viral hepatitis prevention services on existing prevention services (*e.g.*, STD or HIV counseling and testing); (4) to conduct research to identify, develop and evaluate specific programmatic interventions and approaches to achieve successful integration of recommended preventive services and increase levels of coverage for these services; and (5) to produce materials that convey to other public health programs the lessons learned with respect to integration of viral hepatitis prevention activities into existing public health and clinical care programs.

Recommendations for prevention and control of hepatitis A virus (HAV), hepatitis B virus (HBV), and hepatitis C virus (HCV) among adults and adolescents at high risk of infection have been published by CDC (references 1–6, Appendix II, as posted with this announcement on the CDC web site). The primary goals of these recommendations are to decrease the incidence of acute viral hepatitis infections and to decrease the risk of complications from chronic infection with HBV or HCV among populations known to be at high risk for infection. Despite effective vaccines to prevent both HAV and HBV infections, and known behavioral changes necessary to prevent infection with HCV and the serious consequences of chronic HBV or HCV infection, new infections and adverse outcomes of chronic infection continue to occur among high risk adults and adolescents.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Infectious Diseases (NCID): Protect Americans from Infectious Diseases; National Immunization Program (NIP): Reduce the number of indigenous cases of vaccine preventable diseases; and National Center for HIV, STD, and Tuberculosis (TB) Prevention (NCHSTP):

Increase the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services and strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

C. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents and territories, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments and political subdivisions of states (in consultation with States).

This limited eligibility is due to the requirement that viral hepatitis services be integrated with existing state or local public health programs.

State or local health departments are encouraged to partner with academic institutions in developing proposals for this announcement.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $2,900,000 is available in FY 2004 to fund approximately seven awards. It is expected that the average award will be $400,000 ranging from $300,000 to $500,000. It is expected that the awards will begin on or about January, 1, 2004, and will be made for a 12-month budget period with a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Cooperative agreement funds may be used to support personnel, purchase supplies, services, and travel directly related to program activities and consistent with the scope of the cooperative agreement. Funds under this program announcement may not be used to provide direct patient treatment services. Supplies may include, but are not limited to those for laboratory testing and hepatitis A and B vaccine for adults (any adolescents included in the projects may be eligible for free vaccine under the Vaccines for Children program), although other sources of funding for these essential supplies need to be sought. Computers and related technologic needs should be requested under supplies, not equipment, if less than $25,000. Consultants and sub-contracts (*e.g.*, with academic or other institutions) may be requested as appropriate. Federal funds awarded under this program announcement may not be used to supplant State or local funds.

Recipient Financial Participation

Matching Funds are not required for this program.

Funding Preferences

Preference will be given to programs that currently deliver viral hepatitis prevention services (*e.g.*, hepatitis A and or hepatitis B vaccination services, hepatitis C counseling, testing, medical referral or case management for HCV positive persons) through an existing program serving adults (may also serve adolescents) at high risk for infection with hepatitis viruses, and are seeking to evaluate or improve these services. Such existing programs include, but are not limited to STD Clinics, HIV/AIDS counseling/testing sites, correctional health care settings, substance abuse treatment programs accessing and providing services to injection drug users (IDUs), and primary care health settings that are known to serve high risk populations.

Preference will be given to programs that are able to determine the proportion of clients in their selected health/prevention delivery service setting who have known risk factors for infection with HBV, HCV, HAV or HIV (*e.g.*, percent of clients served who are IDUs), and the proportion of clients who accept and receive recommended disease-specific prevention services (*e.g.*, percent of IDUs who receive 1st, 2nd,and 3rd doses of hepatitis B vaccine or are tested for HCV infection, receive results, and, if HCV positive, undergo medical evaluation or other recommended services such as drug treatment if appropriate).

Preference will be given to ensure a diversity of settings for delivery and evaluation of integrated prevention services. Applicants should specify one specific type of setting in which to concentrate efforts to improve and evaluate delivery of recommended services.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities:

a. Develop and implement a plan to improve the delivery of recommended viral hepatitis prevention services in an existing public health or primary care setting that serves known high risk adults and/or adolescent populations, as appropriate for the particular setting proposed. References for current recommendations and integration experiences are included in Appendix II (as posted with this announcement on the CDC website). Core viral hepatitis prevention services should include:

(1) Assessment of risk factors for viral hepatitis among all clients.

(2) Performing appropriate testing of persons for HCV and HBV infection and appropriate pre-vaccination testing for immunity to HBV and/or HAV infection.

(3) Client-centered viral hepatitis prevention counseling.

(4) Hepatitis B vaccine for persons in appropriate risk groups (*e.g.*, persons at risk of sexual transmission, including STD clients and men who have sex with men [MSM]; incarcerated persons; IDUs; and sex and household contacts of persons with chronic HBV infection).

(5) Hepatitis A vaccine to persons in appropriate risk groups (*e.g,* MSM, illegal drug users).

(6) Delivery of primary prevention services for anti-HCV positive and HBsAg-positive persons, including: (a) Counseling on how to prevent transmission to others, (b) identification of partners (sex and/or needle-sharing) for counseling and referral services, if appropriate, and (c) providing hepatitis B vaccine for at-risk (sex or needle-sharing) partners and household contacts of HBsAg-positive persons.

(7) Either directly or by referral, provide appropriate follow-up services to persons found to be anti-HCV or Hepatitis B Surface Antigen (HBsAg) positive, including: (a) Alcohol and drug counseling and/or treatment, and (b) medical evaluation for chronic liver disease and possible treatment, including assistance in accessing medical care.

b.Monitor and evaluate prevention activities and intervention strategies, including:

(1) Develop and provide a written plan to assess the success of strategies to improve hepatitis prevention service delivery (measuring both process and outcome components).

(2) Implement the evaluation plan, including appropriate data collection and analysis, interpretation, and cost-effectiveness analyses. Of particular interest is to determine rates (at baseline and following intervention efforts) for services offered and accepted among clients, including:

(a) HIV and HCV testing among clients recommended for testing.

(b) Receipt of test results (STD, HIV, hepatitis).

(c) HIV positives identified, HCV positives identified, co-infections identified (or persons confirmed negative for one disease or both);

(d) New and chronic infections with other STDs (*e.g.*, syphilis, herpes) identified.

(e) Follow up (which may be provided directly or by referral) for persons infected with HIV or HCV (*e.g.*, appropriate evaluation and treatment for HIV disease, medical evaluation in HCV-positive persons, substance abuse

treatment when indicated, or other appropriate services; and outcome(s) of referral and follow up.

(f) Dose-specific hepatitis A and hepatitis B vaccination coverage for persons for whom vaccine is recommended.

c. Provide staff training regarding viral hepatitis prevention and control, including specialty training required to implement specific activities of the program.

d. Participate in at least two national meetings (CDC, or Division of Viral Hepatitis (DVH), NCID-sponsored, including DVH sponsored National Hepatitis Coordinators Conference) during each budget year of the project period for the purpose of improving and sharing methods to achieve project goals and to plan, present and evaluate program activities.

e. Develop and implement a plan to disseminate the findings and outcomes of the proposed projects, including guidelines for the implementation of successful integrated prevention activities, presentations at state-wide and national health professional meetings, and publication of findings and recommendations.

2. CDC Activities:

a. Collaborate directly in the design and implementation of studies and interventions to evaluate and improve delivery of recommended hepatitis prevention services integrated into existing programs to deliver prevention services.

b. Collaborate directly in the ongoing and expanded training of staff in viral hepatitis.

c. Collaborate directly in data analysis, including economic analysis, interpretation, and presentation and publication of project findings.

d. Coordinate annual meeting of project managers or state and local hepatitis coordinators to plan, present, and evaluate program activities.

e. Collaborate directly in the publication dissemination of successful findings and experiences.

f. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

F. Content

Letter of Intent (LOI)

An LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your LOI will be used to assist CDC in planning for and executing the evaluation of applications submitted under this Program Announcement and should include the following information, the name of the principle investigator(s); the name, address, telephone, e-mail address, and fax number of the applicant's primary contact for writing and submitting the application; the setting proposed to evaluate the intervention/integration and evaluation of services for high risk adults and adolescents (*e.g.*, STD clinic, HIV Counseling and Testing Sites (CTS), correctional health care, substance abuse, primary care program); a brief description of the hepatitis services currently available in the proposed setting; the proposed strategy(ies) to improve these services; and the name(s) of proposed collaborators (*e.g.*, academic partners).

Applications

Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

Although obtaining a DUNS number is not required for applications submitted in response to announcements with deadlines on or before September 30, you are encouraged to obtain a DUNS number now if you believe you will be submitting an application to any Federal agency on or after October 1, 2003. Proactively obtaining a DUNS number at the current time will facilitate the receipt and acceptance of applications after September 2003. To obtain a DUNS number, access: *www.dunandbradstreet.com* or call 1–866–705–5711.

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins and unreduced 12-point font. The narrative should consist of a Plan, Objectives, Methods, Evaluation, and Budget. The program plan should address activities to be conducted over entire five year project period. See all attachments posted with this announcement on the CDC web site for more detailed information on development of the application content.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before July 24, 2003, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

CDC will host a voluntary pre-application conference call for all interested parties to answer any questions about this announcement or application process. To participate, interested parties must contact the program technical assistance contact within two weeks of the publication of the program announcement in the **Federal Register**.

Application Forms

Submit the signed original and two copies of PHS form 398 (OMB Number 0925–0001); adhere to the instructions on the Errata Instruction Sheet (posted on the CDC web site) for PHS 398. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, October 7, 2003. Submit the application to:

Technical Information Management—PA#04009, Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery

of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate the application against the following criteria:

1. Project/Research Design and Methods (45 points): The design of the proposal's intervention(s), activities and methods to evaluate the outcomes or effectiveness of their proposed intervention strategies will be scored as follows:

(a) The extent to which the applicant provides Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. The degree to which the measures are objective/quantitative and adequately measure the intended outcome. Quality of the plan to evaluate the success (outcomes) of proposed strategies to improve service delivery and integrated services. This should include the appropriateness of the proposed evaluation method for the chosen intervention(s) or activities, the potential generalizability of the findings to other similar settings, and the impact of the intervention(s)/integration on other services being delivered at the site (*e.g.* HIV counseling and testing services). (20 points)

The following outcome measures are of specific interest:

(1) Changes in rate of persons seeking services in selected venues who truly have high risk behaviors for recommended services.

(2) Changes in rates of STD, HIV, HCV tests accepted by persons recommended for testing.

(3) Changes in rates of receipt of test results (with and without counseling).

(4) Changes in rates of HIV and HCV positive persons identified, co-infections identified (or confirmed negative for one disease or both).

(5) Changes in rates of new and chronic infections with other STDs (*e.g.*, syphilis, herpes).

(6) Changes in rates of success and follow up (which may be direct or by referral) for persons infected with HIV or HCV (*e.g.*, getting appropriate evaluation and treatment for HIV disease, getting medical evaluation for evidence of chronic liver disease in persons found to be HCV positive, getting into substance abuse treatment, or other appropriate services).

(7) Changes in rates of offering hepatitis A and hepatitis B vaccination to persons for whom vaccine is recommended.

(8) Changes in rates of vaccine acceptance among these clients (and reasons for refusal).

(9) Changes in rates of completion for each dose of hepatitis A and hepatitis B vaccine among clients recommended for and accepting vaccine.

(b) Consistency with the CDC Evaluation Framework for Evaluating Public Health Programs (see Appendix III as posted with this announcement on the CDC web site) and inclusion of a clear logic model (or other appropriate tool) for the proposed program that clearly identifies process and outcome measures (indicators). (5 points)

(c) Quality of methods to be used to evaluate the implementation of the interventions used in the proposed program (process evaluation). (5 points)

(d) Indication of how the evaluation will be used to improve program services. (5 points)

(e) Indication of how evaluation will be institutionalized as a normative, ongoing activity. (5 points)

(f) If research involving human subjects is proposed, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of proposed studies is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community/ies and recognition of mutual benefits. The extent to which applicant describes the existence of or plans to establish partnerships. (5 points)

2. Background and Significance (30 points):

(a) Extent to which applicant demonstrates that one or more hepatitis prevention activities are provided to at least five percent of clients seeking services in the proposed setting for whom prevention services are currently recommended (*e.g.*, at least five percent of STD clients receive hepatitis B vaccine; at least five percent of persons reporting IDU past or current receive anti-HCV counseling and testing). (10 points)

(b) Extent to which applicant demonstrates maximized use of existing resources and staff to integrate viral hepatitis prevention services, which clearly and appropriately addresses all ''Recipient Activities'' in the application; including (directly or through collaboration) adequately trained personnel (technical, administrative, and analytic), adequate facilities, research capacity including Institutional Review Board (IRB), adult vaccine supply (at least partial), and laboratory testing (at least partial) for beginning the project. (5 points)

(c) Extent to which the applicant demonstrates adequate numbers of clients or at-risk population, (based on risk factors or other denominators) to achieve the objectives of the proposed evaluation or intervention. Projects should be of a size that represents populations served annually in medium to large clinics (*e.g.* average at least 3000/year). (5 points)

(d) Extent to which applicant documents experience of proposed personnel, either direct or collaborating, in developing, implementing, and evaluating strategies to improve clinical prevention services for high risk adults and likely has the capacity to do so for viral hepatitis prevention and control activities and services (*e.g.*, training, testing, counseling, vaccination, clinical services). (5 points)

(e) Evidence of existing quality assurance mechanisms to insure appropriate counseling and other services as recommended for the proposed setting, as provided by published CDC guidelines in various settings (*e.g.* STD, HIV, Substance Abuse Treatment). (5 points)

3. Preliminary Studies (10 points): Quality of existing summarized data from proposed setting to demonstrate potential outcomes pertaining to the project.

4. Specific Aims (10 points): Extent to which the applicant describes objectives of the proposed project which are consistent with the purpose and goals of this cooperative agreement program, results oriented, realistic, measurable and time-phased, and consistent with published CDC guidelines on prevention and control of hepatitis C (MMWR 1998;47 [No. RR–19]), hepatitis B (MMWR 1991;40 [No. RR–13]) and hepatitis A (MMWR 1999;48 [No. RR–12]). Sexually Transmitted Diseases Treatment Guidelines (MMWR 2002;5 [No. RR–06]). In addition to these three references, additional relevant CDC guidelines that should be followed include those listed in Appendix II (as posted with this announcement on the CDC Web site).

5. Other (5 points): Extent to which the applicant clearly identifies specific assigned responsibilities of all key professional personnel, and includes a clear time-line for activities.

6. Human Subjects (not scored): Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

7. Budget (not scored): The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activity Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see all attachments posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–6 Patient Care
AR–7 Executive Order 12372
AR–9 Paperwork Reduction Act
AR–10 Smoke Free Work Place Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance in the states, contact: Yolanda Sledge, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2787. E-mail Address: *yis0@cdc.gov*

For business management and budget assistance in the territories, contact: Charlotte Flitcraft, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2632, Email Address: *yis0@cdc.gov*

For program technical assistance, contact: Joanna Buffington, MD, MPH, Mailstop G–37, Division of Viral Hepatitis, Centers for Disease Control and Prevention, Atlanta, GA 30333, Telephone: 404–371–5293, E-mail address: *jbuffington@cdc.gov.*

Dated: July 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–17304 Filed 7–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following advisory committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–4 p.m., July 31, 2003.

Place: The Sheraton Colony Square Hotel, The Crown Room, 188 14th Street, NE., Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The committee recommends ways to incorporate prevention activities more fully into health care. It provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters To Be Discussed: Agenda items will include discussion of the CDC Strategic Directions Initiative, and updates on CDC priorities, with discussions of program activities including updates on CDC scientific and programmatic activities. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Verla Neslund, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S D–14, Atlanta, GA 30333. Telephone 404/639–7000.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of

meetings and other committee management activities, for both CDC the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–17301 Filed 7–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: National Center for Childhood Agricultural Injury Prevention, Request for Applications: OH–03–001

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): National Center for Childhood Agricultural Injury Prevention, Request for Applications: OH–03–001.

Times and Dates: 6 p.m.–6:40 p.m., July 21, 2003 (Open); 6:40 p.m.–9 p.m., July 21, 2003 (Closed); 8 a.m.–5 p.m., July 22, 2003 (Closed); 8 a.m.–5 p.m., July 23, 2003 (Closed)

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 21314, telephone 703.684.5900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications: OH–03–001.

FOR FURTHER INFORMATION CONTACT: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1905 Willowdale Road, Morgantown, WV 26505, telephone 304.285.5979.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–17299 Filed 7–8–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10093]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with the funding resolution for the Older Americans Act. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and potential public harm.

CMS seeks emergency approval because of the short timeframe that is available to issue the solicitation, receive any applications, and prepare and release award packages by October 1, 2003.

We need to seek emergency approval because we need as close to three months as possible between the time that applicants must submit their proposals and the time of award. Overall, we are expecting a sizeable number of grant applications. We will need the three months to sort, review and score the awards and prepare award packages.

CMS is requesting OMB review and approval of this collection by July 23, 2003, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by July 16, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection; *Type of Information Collection:* CMS/AoA Aging and Disability Resource Center Grant Program; *CMS Form Number:* CMS–10093 (OMB# 0938–NEW); *Use:* Information sought by CMSO/DEHPG is needed to award competitive grants to States to develop Aging and Disability Resource Centers; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government, Not-for-profit institutions, Business or other for-profit; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Burden Hours:* 160.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://cms.hhs.gov/regulations/pra/default.asp* or E-mail

your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, in order to be considered in the OMB approval process, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by July 16, 2003.

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attn: Reports Clearance Officer, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–3064. Attn: Julie Brown; and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167. Attn: Brenda Aguilar, CMS Desk Officer.

Dated: June 30, 2003.

Julie Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–17336 Filed 7–8–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CCB–2003–02]

Child Care Research and Evaluation

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, HHS.

ACTION: Announcement of the availability of funds for child care research and evaluation projects.

SUMMARY: The Administration for Children and Families (ACF) intends to fund approximately six new research and evaluation projects in FY 2003. A total of up to $3,520,000 is expected to be available for these competitive awards. Applications will be accepted in three priority areas: (1) Child Care Research Collaboration and Archive (CCRCA); (2) Evaluation of Promising Models and Delivery Approaches to Child Care Provider Training; and (3) Child Care Research Scholarship grants.

Closing Date: The closing date for postmark of applications is August 25, 2003. Regardless of the method by which they are delivered, applications must be postmarked on or before the deadline date. Applications postmarked after the closing date will be classified as late, regardless of when they are received. Applicants are cautioned to retain proof of postmark date. ACF cannot accept applications by fax or through other electronic media.

Deadline: Mailed applications will be considered as meeting the deadline if they are postmarked on or before the deadline date to the ACYF Operations Center at the address below. Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers will be considered as meeting the deadline if they are received at the ACYF Operations Center on the deadline date, between the hours of 8 a.m. and 4:30 p.m., EDT, Monday through Friday (excluding Federal holidays). This address must appear on the package containing the application. Applicants are cautioned to retain proof of postmark or pick-up by courier.

Late Applications: Applications that do not meet the criteria stated above will be considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

Extension of Deadline: ACF may extend an application deadline for applicants affected by acts of God (such as floods and hurricanes), when there is widespread disruption of mail service, or for other disruption of services that affect the public at large (such as prolonged electrical blackout). Authority to waive or extend deadline requirements rests with the Chief Grants Management Officer.

Mailing and Delivery Instructions: Applications may be sent through the U.S. Postal Service, delivered by private courier, or hand delivered to the ACYF Operations Center at the address below. Applications delivered by hand must be received by the Operations Center no later than 4:30 p.m. Eastern Time Zone on the deadline date. Applicants will receive a confirmation postcard upon receipt of applications.

Child Care Bureau, ACYF Operations Center, Educational Services, Inc., 1150 Connecticut Ave., Suite 1100, Washington, DC 20036, ATTN: ACYF–PA–CCB–2003–02, Priority Area:_____, Phone Number: 800–351–2293, E-mail Address: *CCB@ESILSG.ORG.*

Notice of Intent to Submit Application: If you intend to submit an application, please e-mail the ACYF Operations Center. Please include the following information: the number and title of this announcement; the priority area in which you intend to apply, your organization's name and address, and your contact person's name, title, phone number, fax number, and e-mail address. This notice is not required but is strongly encouraged. The information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for future program announcements.

FOR FURTHER INFORMATION CONTACT: For information about the application process, contact the ACYF Operations Center at the above address or phone 1–800–351–2293. For program information, contact: Karen Tvedt, Child Care Bureau Director of Policy and Research at *ktvedt@acf.hhs.gov* or 202–401–5130. The mailing address is Room 2046, Switzer Building, 330 C Street, SW., Washington, DC 20447. The fax number is 202–690–5600. For grants information, contact Sylvia Johnson, Grants Management Officer, *syjohnson@acf.hhs.gov* or 202–401–4529.

SUPPLEMENTARY INFORMATION: The Supplementary Information section consists of five parts. *Part I* provides general information about the Child Care Bureau, its research agenda, authorities, funding priorities, and the application process. *Part II* describes the Child Care Research Collaboration and Archive (Priority Area 1). *Part III* describes the Evaluation of Promising Models and Delivery Approaches to Child Care Provider Training (Priority Area 2), and *Part IV* describes the Child Care Research Scholars (Priority Area 3). *Part V* includes two appendices that include all requirements for applications. *Appendix 1* provides detailed instructions for preparing and submitting applications. *Appendix 2* contains the OMB-approved Uniform Project Description.

Table of Contents

Part I. General Information

A. Purpose

The purpose of this program announcement is to fund cooperative agreements and grants that will increase the capacity for child care research at national, State, and local levels while simultaneously answering critical questions with implications for children and families, particularly low-income working families and families transitioning off welfare.

B. Child Care Bureau

The Child Care Bureau (CCB) was established in 1995 to provide leadership in efforts to enhance the quality, affordability, and supply of child care available for all families. The Child Care Bureau administers the Child Care and Development Fund (CCDF), a $4.8 billion child care program that includes funding for child care subsidies and activities to improve the quality and availability of child care.

The Bureau works closely with ACF Regions, States, Territories and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local, and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated approaches, family-focused services, and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

Since 2000, Congress has appropriated approximately $10 million per year for child care research and evaluation through CCDF. The Bureau's FY 2003 child care research agenda will continue ongoing projects and launch new evaluation and research capacity-building initiatives. The activities supported through this announcement will provide information and data to guide child care services, inform policy discussions, and assist in developing solutions to complex child care issues. We intend to improve our capacity to respond to questions of immediate concern to policy makers, strengthen the child care research infrastructure, and increase knowledge about the efficacy of child care policies and programs in providing positive outcomes for children and families.

C. Statutory Authority and Other Citations

Statutory authority: The Child Care and Development Block Grant Act of 1990 as amended (CCDBG Act), 45 CFR part 74; section 418 of the Social Security Act; Consolidated Appropriations Act, 2003 (Pub. L. 108–7).

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting for this collection of information is estimated to average 30 hours for the Child Care Research Collaboration and Archive, 30 hours for the Evaluation of Promising Models and Delivery Approaches to Child Care Provider Training, and 15 hours for the Child Care Research Scholars, including time for reviewing instructions, gathering and maintaining data needed, and reviewing the collection of information.

The project description is approved under OMB control Number 0970–0139 which expires 12/31/03. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Code of Federal Domestic Assistance: The Code of Federal Domestic Assistance (CFDA) number for all priority areas is 93.647.

D. Priority Areas, Number of Awards, Project Duration, and Funding Levels

In Fiscal Year 2003, the Child Care Bureau anticipates funding approximately six new projects in three priority areas, pending availability of funds and receipt of satisfactory applications. Funding beyond the first one-year budget period, but within the project period, will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

Priority Area 1. Child Care Research Collaboration and Archive: One cooperative agreement for five years at up to $1,500,000 per year.

Priority Area 2. Evaluation of Promising Models and Delivery Approaches to Child Care Provider Training: One cooperative agreement for four years at up to $1,900,000 per year.

Priority Area 3. Child Care Research Scholars: Approximately four grants of up to $30,000 each (for a total investment of up to $120,000 in fiscal year 2003). Scholarship grants may receive continuation funding of up to $20,000 each for a second year.

E. Eligible Applicants for All Priority Areas

Eligible applicants for Priority Areas 1 and 2 include non-profit agencies and organizations, public and private institutions such as colleges and universities, and agencies of State and local government. Faith- and community-based organizations are encouraged to apply as are profit-making organizations that agree to forego their profits.

Eligible applicants for Priority Area 3 include universities or colleges (including faith-based institutions) acting on behalf of graduate students who are pursuing a doctorate and who anticipate completing a child care-related dissertation. The institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council of Post-Secondary Accreditation.

F. Proof of Non-Profit Status

Any non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit

organization can accomplish this by providing a copy of its entry in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled, *or* any of the items above for a State or national parent organization with a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Private, non-profit organizations are encouraged to submit with their applications the optional survey located under ''Grant Manuals & Forms'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

G. Application Process

This announcement includes all of the information needed to apply for funding in each of the priority areas. Detailed instructions for preparing and submitting applications are contained in the appendices.

Applicants are cautioned to follow the prescribed content and format in preparing their application packages. Each priority area describes the purpose, goals, technical requirements, and evaluation criteria against which proposals will be reviewed. The Standard Federal Forms that must be included in applications can be downloaded from the Internet at *http://www.acf.hhs.gov/programs/ofs/.*

Applicants are also cautioned to pay special attention to the preparation of their Project Narrative Statement. This section of the proposal describes the applicant's technical approach, management plan, and detailed budget. It thus contains most of the information on which applications will be competitively reviewed. The Project Narrative Statement will be evaluated according to evaluation criteria outlined in each priority area and the Uniform Project Description contained in Appendix 2.

H. Proposal Review, Selection, and Award

1. Each application will be screened to determine whether the applicant organization is eligible as specified in each of the priority areas. Applications from ineligible organizations will be excluded from the review.

2. The review will be conducted in Washington, DC. Expert reviewers will include researchers, Federal or State staff, child care administrators, and other individuals experienced in child care research and evaluation. A panel of at least three reviewers will evaluate each application to determine the strengths and weaknesses of the proposal in terms of the Bureau's research goals and expectations, requirements for the Project Narrative Statement, and evaluation criteria for the priority area under consideration.

3. Given the involvement of non-Federal reviewers, applicants have the option of omitting from the application copies (but not the original), specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. If the applicant omits individual salary information on application copies, the copies must include summary salary information.

4. Panelists will provide written comments and assign numerical scores for each application. The indicated point value for each criterion is the maximum numerical score for that criterion. The assigned scores for each criterion will be summed to yield a total evaluation score for the proposal.

5. In addition to the panel review, the Child Care Bureau may solicit comments from other Federal offices and agencies, States, non-governmental organizations, and individuals whose particular expertise is identified as necessary for the consideration of technical issues arising during the review. The Bureau will consider their comments, along with those of the panelists, when making funding decisions. The Bureau will also take into account the best combination of proposed projects to meet overall research goals.

6. The Commissioner, Administration on Children, Youth and Families (ACYF) will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on: (1) The rank order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's research objectives; (4) the funds available; and (5) other relevant considerations.

7. Selected applicants will be notified through the issuance of a Financial Assistance Award. That document establishes the funding level, terms and conditions of the award, reporting requirements, effective date of the award, budget period for which support is given, and the total project period for which support is provided.

8. Grants to successful applications will be awarded by September 30, 2003. Applications for continuation grants funded under this award will be entertained in subsequent years on a non-competitive basis subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the interest of the government.

I. Type and Frequency of Post-Award Reporting Requirements

All grantees will be required to submit semi-annual progress reports that describe major accomplishments during the previous six months, plans for the next six months, problems or difficulties encountered and plans for their resolution, significant research findings, and dissemination activities. Grantees will also be required to submit semi-annual fiscal reports on the Standard Federal Form 269, long version. A final report documenting the project activities and results will be required at the end of the grant.

Part II. Child Care Research Collaboration and Archive (Priority Area 1)

A. Purpose

The purpose of this priority area is to seek qualified applicants for a cooperative agreement to launch and operate the Child Care Research Collaboration and Archive (CCRCA), a knowledge management and support system for the child care field.

B. Eligible Applicants

Eligible applicants include non-profit agencies and organizations, public and private institutions such as colleges and universities, and agencies of State and local government. Faith- and community-based organizations are eligible to apply, as are profit-making organizations that agree to forego their profits.

C. Type and Number of Awards

One cooperative agreement will be funded.

D. Project Duration and Budget Period

The project period will extend up to five years. The award, on a competitive basis, will be for a one-year budget period. Applications for continuation grant funds will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the government.

E. Funding Levels and Maximum Federal Share

It is anticipated that up to $1,500,000 will be available for this Cooperative Agreement in Fiscal Year 2003. Up to $1,500,000 may be awarded in each

succeeding 12-month budget period. The maximum Federal share is 90 percent of total project costs.

F. Matching Requirements

The successful applicant must provide a non-Federal match of 10 percent of total project costs. The total approved project cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $1,500,000 in Federal funds must include a match of at least $166,667 for a total project cost of $1,666,667. (To compute the non-Federal share divide the Federal share by .90 and subtract the Federal share from that amount.) Applicants are encouraged to contribute resources beyond the required match. Funding partnerships that significantly extend the scope and reach of the project are especially encouraged. Applicants should provide letters of commitment from organizations or agencies verifying the actual amount of non-Federal support to the project. Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

G. Federal Role

A cooperative agreement is Federal assistance in which substantial Federal involvement in project activities is anticipated. Responsibilities of Federal staff and the successful applicant are negotiated prior to award. The Child Care Bureau and the grantee will work collaboratively on the development of products such as work plans, technical assistance materials, summaries or literature reviews, decisions about data sets to be archived, and other technical matters. The Bureau will also participate in the Technical Work Group and will work closely with the grantee to promote partnerships and collaborative research, both within the Child Care Policy Research Consortium and with other potential partners. In addition, the Bureau will assist with technical assistance activities as appropriate and needed.

H. Project Description

The Child Care Research Collaboration and Archive (CCRCA) is the national research knowledge management system of the Child Care Bureau. The developmental phase of the CCRCA is being carried out through Contract Number 90–00–0009 by BRI Consulting Group, Inc. (BRI) and their subcontractor, the National Center for Children in Poverty (NCCP). This contract will end on September 30, 2003, at which time all products, hardware and software will be transferred to the organization awarded the cooperative agreement under this announcement.

During the operational phase, the CCRCA will be publicly launched and marketed to a range of contributors, users, and partners. Functions established in the developmental phase will be continued and enhanced. New functions and activities will be developed to respond to the emerging needs of stakeholders.

A project description and conceptual design of the CCRCA are available through the ACYF Operations Center at the address above.

Goals

The CCRCA has five interrelated goals that link its three functional components:

1. Operating a state-of-the-art, web-based child care and early education research archive with ongoing development of background content, ready access to data sets for secondary analysis, technical assistance for contributors and users, strong linkages with other archives and information systems, and ongoing synthesis of data into useful information and knowledge.
2. Promoting collaboration and partnership building for child care and early education research and policy analysis to facilitate information-sharing and use of research findings by researchers, policy makers, and other key stakeholders.
3. Developing and providing technical assistance to assist data contributors, technical analysts, and end users of research information.
4. Making sound child care research findings available to researchers and the public in accessible language and formats.
5. Encouraging the use of research-based information by policy makers, practitioners, providers, parents, and others with an interest in child care and early education issues.

Functional Components

The CCRCA consists of three functional components: (1) An interactive web-site through which the public can gain easy access to research reports, summaries, and other related documents designed for end-users of research; (2) a topical archive of data sets from major child care research and evaluation studies with related metadata elements and other technical features; and (3) a technical assistance and support system to improve the quality of data, assist researchers in developing analytic skills, facilitate collaboration, and create a stronger research infrastructure.

Component 1. The Interactive Web Site

The most visible component of the CCRCA will be the interactive web site. The largest group of web-site users will be individuals or organizations whose primary functions and goals relate to child care research. Important categories of users include child care providers and administrators; legislators and policy analysts; child development specialists and educators; psychologists and pediatricians; economists and community planners; professors and students; community child care organizations such as resource and referral agencies; parents and consumer groups; and businesses and civic planners.

Given the large number and diversity of end users from beyond the research community, the CCRCA must be concerned with ensuring that findings on a wide variety of topics are easily searchable and accessible in formats that meet the needs of different constituencies. In addition to published technical reports and articles, selected findings must be translated into user-friendly formats such as special charts, briefing papers, on-line newsletters, and other summaries that are accessible to non-technical audiences.

Researchers who wish to conduct secondary analyses of archival data sets, and have a variety of technically oriented information needs, will be able to download data through the web-site, join electronic theme groups, and participate in a variety of research networks, along with other researchers around the country. This group will be supported through the CCRCA components described below.

Component 2. The Research Database and Data Archive

The primary function of the CCRCA is to maintain and further develop a web-based database of research and related products. This database is intended to improve access to child care and related early education data, promote the use of archival data for analysis, and facilitate the utilization of research findings by policy makers, practitioners, academics, parents and other stakeholders. A prominent feature of the archive is that products will reside in the CCRCA's content database or in other locations, but will be accessible in a seamless manner through the CCRCA web site. These relationships with other archives and information systems also form part of the infrastructure for collaboration and networking among the various stakeholders.

The underlying structure of the archive consists of specially processed and documented research products and data sets linked to a comprehensive child care taxonomy which includes a searchable database, metadata elements that describe and categorize archive holdings, and an indexing system. These features interface with end users through the interactive web site.

Taxonomy. During the developmental phase, a taxonomy of child care terms and variables was developed for the CCRCA's underlying database. This feature is designed to allow end users of the web-site to conduct sophisticated searches with ease. The taxonomy will be continually expanded and refined during the operational phase as research products are added to the archive and new variables are identified.

Metadata—or data about data—that describe archive holdings were developed in accordance with Data Documentation Initiative (DDI) standards used by nationally recognized archives and information systems. As new products are acquired and indexed in the CCRCA, the metadata will continue to evolve.

Documents. During the developmental phase, more than 2,000 research documents were identified and catalogued for inclusion in the CCRCA data base. Abstracts and other information about these documents will be available through the CCRCA Web site and, where possible, the full text of the documents will be available to users. Through ongoing efforts, including coordination with researchers and other organizations, the grantee will continuously expand CCRCA holdings.

Data Sets. A major function of the CCRCA will be to process, house, and preserve quality data sets and related documents from studies on child care and early care and education, either directly or in partnership with other archives. The CCRCA currently holds two data sets that have been processed to make them useable and accessible to the larger research community. Data processing includes: sub-setting of child care-relevant variables and formatting for easy download to statistical packages for analyses; variable labeling; application of weights; and maintenance of subject confidentiality. The amount of data processing required before inclusion in the CCRCA will vary depending on the number and types of variables in a data set and the amount of processing completed by the owner of the data prior to submission.

Special Topic Archive. During the developmental phase, the CCRCA subcontracted with the Inter-University Consortium for Social and Political Research (ICPSR) at the University of Michigan to develop a special topic archive (STA) for the CCRCA. The intent was to use the established, ongoing services of ICPSR to begin processing important policy-relevant data sets and making them web-accessible to the research community. The grantee will be expected to support and further develop the CCRCA special topic archive or offer a comparable arrangement to maintain and expand these services. The Statement of Work between ICPSR and BRI Consultants can be obtained through the ACYF Operations Center listed above.

Data Standards and Documentation. The archive also sets standards and establishes procedures for documentation of data sets. Early in the operational phase, data documentation and code books will be developed for archived data sets to make these data readily available to other researchers and facilitate secondary analysis. A related goal is to increase the average quality of child care research through systematic improvements in the underlying quality of data.

Content Development. Once the archive is operational, data contributors and end users of research will be able to access data and published research, as well as special materials such as research summaries or methodology briefs. This activity will involve ongoing acquisitions and development to ensure that the needs of contributors and users are met.

Data Contributors. Any child care investigator, regardless of the funding source, is encouraged to house data with the CCRCA. Since 2000, all research grantees funded by the ACYF Child Care Bureau have been required to plan for the archiving of their data. The intent is that grantees will prepare their data sets according to sound data processing and documentation practices, and house those data sets at the CCRCA within two years after the end of their funding period. The CCRCA will provide technical support to contributors regarding data entry, processing, analysis, and documentation. Apart from research that is sponsored by the Child Care Bureau, there are a large number of studies underway or recently completed that focus on child care or early education or contain relevant variables. Thus, the archive will increasingly house analytic data sets from a variety of sources. For example, the CCRCA might archive specially prepared analytic data sets from State child care agencies or networks of resource and referral agencies; large data sets from major Head Start studies or national surveys with child care variables; or small local studies. A ''Handbook for Data Contributors'' was created under the development contract and will be available for dissemination early in the operational phase.

Data Users. Many researchers will use the CCRCA to access public data sets for secondary analysis. The CCRCA must maintain a system of data access for primary data sets as well as specially constructed analytic files and interactive tools. For example, some researchers might need to extract child care data from national longitudinal studies in which child care is embedded in a larger set of issues. Some may need to combine child care data from two or more data sets to create a linked data file. Others may need to conduct simple analyses of large data sets like national census estimates or State administrative data. Support for data users will continue to grow over the next several years, as the CCRCA becomes known to a wider set of technically sophisticated users.

Component 3. Technical Assistance and Collaboration

The Technical Assistance and Collaboration component provides interface and support for data contributors and users as well as for the Child Care Policy Research Consortium and other collaborative endeavors undertaken by the Child Care Bureau.

Technical Assistance

Early in the operational phase, the CCRCA will establish technical support for the archive, much of it delivered through on-line services. This function will include such features as:

- Frequently asked questions and answers;
- An e-mail help desk;
- Short briefing papers on common technical issues;
- Prototypical research designs and methodological applications developed to encourage new researchers and promote a high standard of quality in emerging studies;
- Innovative tools such as CD–ROMs and a range of ready-to-use formats that make archived data sets more easily accessible to the research community;
- Information on CCRCA services, products and new acquisitions;
- Technical guidelines for data processing and access.
- Electronic mail services to facilitate networking and information exchange among researchers, policy makers, and other stakeholders; and
- Access to a database on designs and measures for researchers in this field.

The CCRCA will also provide training and technical assistance opportunities

by conducting technical roundtables for researchers working on special data sets such as child care administrative data from the States. Other opportunities might include training institutes that convene a small number of researchers to work in a guided setting with important national data sets. Support for secondary analysis of various data sets in the CCRCA can be provided through these training institutes as well as through small grants. Support might also be provided for graduate students or postdoctoral fellows to work in residence with archive staff on research related to the holdings.

Workshops and training sessions will be convened at major national conferences. In particular, the CCRCA will conduct sessions at the Child Care Bureau's annual Child Care Policy Research Consortium meeting and its annual meeting of State Child Care Administrators. While some technical assistance activities will be supported through this Cooperative Agreement, others may require outside resources, including other funding partners and fee for service arrangements.

Collaboration and Infrastructure Building

The CCRCA will create a national infrastructure for child care research. A major function of this effort will be to facilitate collaboration among researchers to build knowledge, facilitate networking and thematic work across projects; and provide a vehicle for peer technical support and scientific advancement. A related function is to increase interaction and mutual support between the research and policy communities. As researchers try to make their studies more relevant for policy and practice, policy makers will be able to make better use of the findings. These relationships can be nurtured and significantly strengthened through activities of the Technical Assistance and Collaboration component.

The CCRCA will participate as a member of the Child Care Policy Research Consortium and provide limited support for consortium-wide initiatives. The CCRCA will participate in activities of the consortium steering committee and assist with note taking and preparation of summary documents resulting from conference calls, research forums, or major meetings. The CCRCA will support participants in the annual meeting of the consortium with technical workshops and small group discussions, as well as on-site document preparation and organization of materials to lend depth and breadth to the discussions. (Logistical support for the meeting will be supplied by the Child Care Bureau's Conference Management Center). The CCRCA will also assist with planning for meetings and briefings, coordinating the work of thematic work groups for cross-cutting research, and preparation of proceedings or other summary documents.

As part of this function, the CCRCA will maintain the consortium list-serve, including various subgroups working on cross-cutting themes. In this regard, collaborative efforts may be broadened to include research organizations and individuals outside of the consortium. To support this cross-fertilization of research and partnership building, the CCRCA will set up and manage web-based theme groups of researchers who are working on key issues. Topics of interest currently include early learning and literacy, improvement of quality and development of the child care workforce, child care subsidy and other policy issues, dynamics of supply and demand in child care markets, and family decisions in diverse cultural contexts and socioeconomic conditions.

The CCRCA will also provide limited analytic support to State child care agencies. The CCDF Lead Agencies make difficult program and policy decisions about how services should be targeted and how limited quality funds should be spent. To assist States in making decisions that are informed by the soundest information possible, the CCRCA will translate research findings into briefing papers, power point presentations and other formats. Other forms of support might include statistical analysis of national data sets containing child care related variables and policy research forums.

I. Evaluation Criteria

Eligible applications will be scored competitively against the published evaluation criteria described below. These criteria will be used in conjunction with the other expectations, priorities and requirements in this announcement to evaluate how well each proposal addresses the Child Care Bureau's research agenda and goals. The point values indicate the maximum numerical weight for each criterion (100 total points).

Criterion 1. Approach (40 Points)

The extent to which the applicant's technical approach:

Appropriately links CCRCA goals, objectives, activities and performance indicators to ensure successful operations, ongoing development, and public acceptance.

Demonstrates the ability to effectively implement and coordinate the functional components of the CCRCA to promote high quality and useful research, make research data and products easily accessible, significantly improve the research infrastructure, and support the Child Care Bureau and its Child Care Policy Research Consortium.

Describes the technical specifications of the information technology system that will be developed or sustained to support the web-based functions of the CCRCA and addresses issues related to ACF information technology requirements for project boundaries, data security, risk analysis, operational concepts, functional requirements, systems design, deployment plans, and performance standards.

Provides a detailed description and rationale for the range of topics to be included in the CCRCA archive, the types of data sets that currently exist and are anticipated; and which among these should be given priority for inclusion in the CCRCA.

Demonstrates an awareness of current activities being undertaken in the field of data archiving, web site management, technical assistance and collaboration; describes how the approach being proposed would build on or coordinate with this work.

Demonstrates an understanding of the technical issues and problems associated with a national data archive; describes the strengths and limitations of existing approaches; and proposes effective solutions to a full range of issues. Important issues include, but are not limited to, multiple archiving of individual data sets; technical problems with data sets such as poor variable definitions, small sample sizes, and missing data; delimitation of public access to data; piecemeal publication of data sets and documents related to a single study; masking of individual identifiers and protection of confidentiality; legal issues of liability; and terms-of-use agreements.

Describes a plan for effectively partnering with other research and data archives, knowledge management, and information systems; funding partners; and research consortia, professional associations, or other relevant bodies whose members represent target users of the CCRCA.

Discusses the relationship of archiving to the protection of human subjects, informed consent, protection from research risks, and Institutional Review Boards (IRB). Addresses the relationship of the funded archive to Institutional Review Boards and the Department of Health and Human Services Office for Protection from Research Risks and Certificates of Confidentiality, specifically.

Proposes an effective approach to technical assistance for contributors and users of the CCRCA, showing how the technical assistance plan relates to and promotes each of the other components.

Describes the composition and role of an advisory group in support of the work of the CCRCA.

Proposes an effective plan to increase collaboration and partnership-building at national, Statewide and local levels, support researchers and other stakeholders in their efforts to build effective partnerships, and promote collaboration in a variety of environments, such as colleges and universities, State and local child care agencies, and child care organizations.

Proposes approaches that reflect cultural sensitivity to the issues being addressed.

Identifies possible barriers to achieving the proposed results and benefits and describes effective strategies for addressing these barriers.

Provides assurance that, should the occasion arise, all products acquired, developed or maintained during the term of the cooperative agreement will be passed on to ACF or the subsequent CCRCA grantee.

Criterion 2. Staff and Organizational Profiles (25 Points)

The extent to which the applicant:

Commits to an adequate number of staff with the expertise to carry out the project with a high level of accomplishment, on time, and within budget.

Proposes a project director and key staff with highly relevant skills, knowledge and experience. Brief resumes of the current and proposed staff, as well as job descriptions demonstrate the ability of the proposed staff to fulfill key roles. Resumes indicate what position each individual will fill and position descriptions specifically describe each job as it relates to the proposed project.

Describes university or agency support, if applicable, to the organizational capabilities required for implementation of this activity.

Describes organizations and consultants who may work on the program along with a short description of the nature of their effort or contribution.

Provides information on plans for training project staff as well as staff of cooperating organizations and individuals, if needed.

Provides a detailed management plan, with personnel allocations, tasks and subtasks, products, timelines, and coordination of components, that shows how the proposed project goals will be accomplished and provides a means of monitoring progress, accomplishments, and shortfalls.

Describes the relationship between the proposed project and other work planned, anticipated or underway by the applicant with Federal assistance.

Demonstrates sufficient resources and appropriate facilities to successfully implement, manage and further develop the CCRCA.

Includes letters of intention from any subcontractors or primary consultants.

Criterion 3. Objectives and Need for Assistance (15 Points)

The extent to which the applicant:

Demonstrates an awareness of current issues and initiatives in child care research, policy and practice, technical assistance, and collaboration; as well as the interrelationships among these broad functions.

Describes the need for an integrated system to further research, knowledge, and collaboration in the field of child care and early care and education.

Describes the relationships among the interactive web site, the research database and data archive, and the technical assistance-collaborative components of the project.

Discusses current issues in archiving including, but not limited to, topics such as the world-wide web, dissemination strategies, liability, confidentiality, and terms-of-use agreements.

Describes the audience of CCRCA contributors and users, estimates their number, describes their needs, and presents a sound growth model with estimates of increased annual usage and costs.

Criterion 4: Results or Benefits Expected (10 Points)

The extent to which the applicant:

Identifies the results and benefits of the proposed project to enhance policy, improve practice, and advance science in child care research.

Describes how the proposed approach to the CCRCA would contribute to overall efforts to improve child care services and systems, the development and well-being of children, and particular outcome measures, as applicable.

Discusses the significance to the field of the proposed project and describes why the proposed approach is innovative.

Provides a set of performance measures designed to demonstrate how well the goals and objectives of the CCRCA are being met.

Describes how technical assistance plans will benefit contributors and users of the CCRCA including the Child Care Bureau, members of the Child Care Policy Research Consortium and other members of the child care research and policy communities.

Describes how the proposed project will significantly increase collaboration and partnership building among researchers, policy makers, and other stakeholders at national, State, and local levels.

Criterion 5. Budget and Budget Justification (10 Points)

The extent to which the applicant:

Provides a narrative description and sound rationale for the budget information presented on Standard Forms 424 and 424A and related budget tables presented in the text.

Demonstrates that costs to operate the CCRCA are reasonable, adequate and justified in terms of the proposed tasks and subtasks as well as results and benefits.

Includes sound fiscal control and accounting procedures to ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

Part III. Evaluation of Promising Models and Delivery Approaches to Child Care Provider Training (Priority Area 2)

A. Purpose

The purpose of this project is to identify and test a training model and alternative delivery approaches that show promise for improving the knowledge, skill and performance of child care providers.

B. Eligible Applicants

Eligible applicants include non-profit agencies and organizations, public and private institutions such as colleges and universities, and agencies of State and local government. Faith- and community-based organizations are eligible to apply, as are profit-making organizations that agree to forego their profits.

C. Type and Number of Awards

One cooperative agreement will be awarded.

D. Project Duration and Budget Periods

The project period will extend up to four years (September 30, 2003 through September 29, 2007). The award, on a competitive basis, will be for a one-year budget period. Applications for continuation funds will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory

progress of the grantee, and a determination that continued funding would be in the best interest of the government.

E. Funding Levels and Maximum Federal Share

The Child Care Bureau intends to commit a maximum of $1.5 million and the Office of the Assistant Secretary of Planning and Evaluation intends to commit a maximum of $400,000 for a total of $1.9 million for the first year and each subsequent year of the award, for a maximum total of $7.6 million. The maximum Federal share is 90 percent of total project costs.

F. Matching Requirements

Non-Federal matching funds of at least 10 percent of total project costs will be required. The total approved project cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $1,900,000 in Federal funds must include a match of at least $211,111 for a total project cost of $2,111,111. (To compute the non-Federal share divide the Federal share by .90 and subtract the Federal share from that amount.) Applicants are strongly encouraged to contribute additional cash or in-kind resources.

Applicants are encouraged to offer funding partnerships that significantly extend the scope and reach of the project. For example, the applicant might include a partnership with an organization that has funding to provide child care provider training. Applicants should provide letters of commitment from organizations or agencies verifying the actual amount of non-Federal support to the project.

Grantees will be held accountable for commitments of non-Federal resources even if these exceed the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

G. Federal Role

A cooperative agreement is Federal assistance in which substantial Federal involvement in project activities is anticipated. Responsibilities of Federal staff and the successful applicant are negotiated prior to award. The Bureau and the grantee funded under this priority area will work collaboratively to facilitate accomplishment of project goals, including development of the final technical approach and study design, selection of core measures, and the establishment of the Steering Committee and Technical Work Group. The Bureau will also facilitate collaboration with other research grantees and contractors.

H. Project Description

The cooperative agreement under this priority area will support a multi-year research initiative to design, implement, manage, and coordinate the evaluation of a child care provider training model under varying conditions. A ''promising model'' is defined as one with at least preliminary evidence of effectiveness in small-scale interventions or for which there is potential for generating data that will be useful for making decisions about taking the intervention to scale and generalizing the results to diverse populations and settings. Provider populations of interest include family home providers, informal care providers (such as family, friends and neighbors), and center staff who are entry-level or have minimal qualifications.

The training model should include one or more focal areas such as supporting children's development in specific domains, promoting positive outcomes in linguistically or culturally diverse populations, or managing children's behavior. A promising model might be tested in different geographic locations; among providers of differing social, economic, educational, or cultural characteristics; or with providers who serve children and families with special characteristics and needs. Where a single training model would be used, variations in the delivery of training might be included in the evaluation.

The Child Care Bureau is especially interested in training models that promote excellence among providers who serve children and families with special needs and challenges. Examples include (1) infants and toddlers; (2) families eligible for assistance through the Child Care and Development Fund and related State and Federal funding sources; (3) ethnic and language minority groups; (4) children with disabilities; and (5) other groups that may present special challenges or needs.

The cooperative agreement will be awarded to an organization acting as evaluation coordinator (grantee), which will select three-to-four study sites according to the project design. Site selection will be finalized with input from the Child Care Bureau. The evaluation coordinator will provide project direction, support, and coordination across sites. This structure is intended to facilitate the sharing of ideas, measures, data, and other specialized resources as well as collection of core data elements across study sites.

The evaluation coordinator will detail the specific roles of the evaluation coordinator in carrying out the proposed design, in managing the project, and in coordinating with the Child Care Bureau and other partners in the project. At least one study site will utilize a randomized controlled design in order to explore cause and effect relationships between the training model and child outcomes. Applicants should propose a preliminary list of study sites and describe the training intervention. The application should include letters of commitment from individuals representing the various study sites.

Funds will be provided under this cooperative agreement for research design, implementation fidelity, data collection, and analysis. Funding and delivery of the training intervention must be accomplished through a partnership with a State or local service partner. The intervention may be funded with CCDF quality funds, Early Learning Opportunity Act discretionary grants, or other funds as appropriate.

The evaluation coordinator will establish an advisory committee or technical work group with input from the Child Care Bureau. In consultation with this group, the evaluation coordinator will provide guidance and direction on decisions regarding the training intervention; design and methodology of the coordinated research study; selection of core measures and instruments; collection and analysis of core data; and preparation and reporting of findings from the integrated research study. The evaluation coordinator will provide technical support to the individual study sites on the training intervention; provide logistical support for meetings; and make materials available for the collection of core data across projects.

Each of the individual study sites will be responsible for the development, implementation and maintenance of the intervention. However, the evaluation coordinator will provide pre- and post-intervention direction related to data collection, the analysis of a core set of common cross-site baseline measures, and collection of family and child outcome data. The grantee will be responsible for ensuring implementation fidelity and data quality. Timely cross-site data will be returned to individual project researchers to serve as a basis for local analyses. Additional collection of data on specific measures used in the local sites may be carried out by the individual projects using project funds.

Each individual study site will ensure that training is delivered to the target population as proposed, and that core

implementation and outcome data are identified and collected in consultation with the grantee. Data collection and management at each site will be the responsibility of an individual or organization charged with collecting the core set of measures designated for use in all sites and model variations. Additional collection of data on local measures and analyses of implementation and outcomes may be carried out by individual study sites. This arrangement allows local researchers to consider qualitative or other data collection approaches to augment the core measures.

The evaluation coordinator must ensure that each site has the capacity to develop, implement, and maintain the intervention taking into account important features of the training program and issues related to providers, families and children. This capacity may be provided directly by the grantee organization or through agreement with another organization.

I. Narrative Statement Requirements

The following section describes technical requirements for the Project Narrative Statement.

1. Technical Approach

The applicant will describe its proposed technical approach including an integrated evaluation design. The narrative must link conceptual, theoretical and technical elements of the design, including the selection of the training model or approach as well as plans for site selection and sampling, measurement, field implementation, data collection, and data analysis. Anticipated short-term and long-term outcomes must be described. Initial results regarding implementation fidelity and effectiveness of the training intervention on providers' skills and practices are expected at the end of the first year of training implementation. The design (and anticipated long-term outcomes) must include follow-up to evaluate retention of skills and practice and outcomes of the intervention for children and families. Completion of all data analyses and reports is expected in year four. Public use data files must be archived with the Child Care Research Collaboration and Archive (CCRCA) within 24 months after completion of the project.

The goal of this evaluation is to determine whether specific caregiver training models or approaches effectively improve the knowledge, skills, and practices of caregivers who have traditionally been left out of research and evaluation studies. Of special interest are family home providers, informal care providers (such as family, friends, and neighbors), entry-level center staff and center staff with minimal qualifications. There is a need for studies that are scientifically rigorous and at the same time feasible for the population under study. Studies should use methodologies that are as rigorous as possible, given the training intervention under study, the population being served, and the presence of potential mediating or confounding variables. Studies may use experimental designs, mixed-approaches or planned variations, but studies that rely solely upon descriptive data (whether qualitative or quantitative) are discouraged. The research design must be clearly articulated and there must be a rationale for including specific groups and sub-groups of care providers in different study groups. At least one study site will be expected to use randomized controlled design.

Three areas of complementary research are of particular interest:

- Studies that address how individual or background differences in providers interact with the training approach or model to influence provider outcomes. These studies would address the question: For which provider under which condition is the training approach or model most successful?
- Studies that compare different delivery methods of the training or model, or different approaches to implementation, in order to identify key features of the training approach or model that might improve effectiveness and ease of implementation. These studies would address the question: Under what circumstances does the training approach or model achieve the greatest impact?
- Studies that use randomized controlled designs that can address cause-effect relationships between training models and measured outcomes. These studies would address the question: what training models or training model components lead to positive changes in the competency of providers and outcomes for children and families?

Studies should incorporate measures of intervention fidelity for use as potential mediating variables in the analyses and to control for confounding. For studies using multiple comparison and/or control groups, measures describing the intervention must be included in the study design and/or data analysis plan to ensure that any differences in provider, child or family outcomes between treatment groups and control groups are directly attributable to the intervention. The studies should incorporate a suitable number of sites to provide sufficient variation to test relevant hypotheses.

2. Conceptual Framework

The conceptual framework presents the theory or underlying idea behind the training model being proposed for evaluation, describes how the training model was developed and used in the field, and why this model is considered worthy of evaluation. It also summarizes the proposed evaluation component, demonstrating the appropriateness and benefit of this approach for assessing the effectiveness of the training model for the target populations.

Training Model or Approach

This section should summarize key aspects of the proposed training model, including the training goals, the types of issues or variables included, the training process, the population of providers to which it applies, what provider outcomes are measured, and how success of the program is determined. If the training program has been formally studied, these studies and their outcomes should be described.

Training models to be considered for implementation and evaluation should include one or more specific areas of focus; for example:

- Training activities designed to improve the skills and practices of caregivers to enable them to support children's development in the area(s) of emerging literacy, language development, numeracy, social-emotional development, physical development, creative expression, and health;
- Training activities to promote skills and practices that would support positive outcomes in linguistically and culturally diverse populations;
- Training and professional development activities designed to enhance child behavior management or other care practices.

Target Populations

Provider Populations. The training approach or model should be targeted to family home providers (regulated and legally-exempt from regulation), informal care providers (such as family, friends and neighbors), and center staff who are entry-level or have minimal qualifications.

Child and Family Populations. The training model and approaches selected for the training intervention should take into account the effects that the theorized changes in skills and practice will have on outcomes for children of the ages served by providers in the sample. For example, some home-based

providers care for only infants and toddlers or school-age children. Others have a wider range of children in their care. The training model should clearly point to improvements in practice that will affect children of those ages. Many children face special challenges that stem from cultural or language differences, especially if their families are recent immigrants and have not yet created a bridge between their native cultures and ways of life in America. In some communities, child care providers must relate to children of different cultures. Children with disabilities or special needs most often receive care in home-based settings and providers take on these challenges with very little training. More broadly, children from low-income families often face particular challenges as they prepare to enter school. The applicant should describe how changes in practice brought about by the training intervention will help providers support the physical, emotional, social, cognitive and linguistic skills of children with diverse characteristics in order to develop well and be successful in school.

The applicant should provide a detailed description of the training intervention and how it will be delivered to the target population. The expectation is that the funding and delivery of the training will be accomplished through a partnership with a State or local service provider. The cooperative agreement will fund the evaluation of the training implementation and the effects of the training on provider, child and family outcomes.

The creation of partnerships between the researchers and the appropriate State or local entities is key to the success of the implementation and evaluation of the project. When partnerships exist, or will be developed, applicants should describe the specific programmatic or data needs of the service delivery system, as well as existing data collection efforts, how these data will be used within the design of the proposed study, how the data will be augmented, and how the data will enhance the overall strength of the study.

Research Questions and Methodological Justifications

Intervention. What is the theoretical justification for the training intervention selected, and to what extent does the intervention adhere to its theoretical basis? What is the preliminary evidence that the approach will be effective? What are the expected short-term and/or longer-term outcomes for care providers, children and families? How is each component or combination of training components expected to affect children's outcomes? What are the mediating pathways through which the training model causes change in child outcomes (*i.e.*, what is the logic model)? How are mediating variables and outcomes measured? What is the range of practices that are affected, either positively or negatively? To what extent can procedures be documented, and what is the process for achieving this? What is the range of activities to be undertaken? How does the training intervention differ from existing training opportunities available to the target population? What is the process of continuous improvement, and how are changes, and benefits of those changes, documented over time?

Effects of personal characteristics and site and community contexts. What structures and supports are needed to implement the training intervention? What key activities are needed to gain support from community stakeholders and collaborators? How should providers of different backgrounds or working in different settings be recruited into the study? What about the parents of children attending those settings? What are the contextual variables that might influence how the training intervention is implemented: *e.g.*, culture, neighborhood characteristics, organizational climate, level of poverty in the community, provider backgrounds, education, motivation, skills and attitudes, levels of support (financial and otherwise), competing priorities in the lives of the targeted provider population? What are the relationships among the individuals who are stakeholders and/or participants in the intervention?

Sample. Who is expected to benefit from the training intervention? Is it a universal or selected intervention? Who are the intended participants (types of providers)? How are age, gender, language, socio-economic status and other key child care provider, child, or family characteristics, as well as cultural issues, addressed? To what populations can evaluation results likely be generalized?

Delivery of training intervention. Who gets what, from whom, and how much? What is the intensity of the intervention, the frequency of contact, the length of each contact, the number of contacts and the duration of the training intervention? To what extent is the program individualized, and what are the supports for individualization (*e.g.*, periodic assessments of needs and progress). What is the level of participation, and who is most and least likely to participate? Who delivers the program? What is the level of education, training, and supervision that is required of training intervention staff? To what extent do external staff (researchers, program developers, trainers) have to remain involved, and in what capacities? What are the barriers to implementation, and how are challenges resolved? What duration, intensity, frequency, and types of ongoing support are necessary to sustain the program after the initial implementation period? What modifications and adaptations are made for care providers with specific challenges to participation to be successful?

3. Evaluation Design

Sampling Plan. The proposed sampling plan should describe technical aspects of sample construction at each level of analysis, including selection of sites, providers, and children, sample sizes and corrections for attrition, and procedures for maintaining sample integrity throughout the study. This plan should demonstrate an understanding of the various provider categories proposed for this evaluation and the challenges of sampling members of each group.

Measurement Plan. All measures proposed for use in the study must be fully described and justified with respect to their appropriateness for study goals, training variables, populations, use in previous studies, known psychometric properties, and other salient factors. The relationship between core measures and site specific measures must be described, as well as how the different levels of measurement will support and enhance one another analytically. The proposal should specifically describe the measurement variables to be included in the core assessment and those used in the site-specific assessment. How will this battery of measures contribute to both breadth and depth of understanding?

Field Operations and Data Collection Plan. This section of the design describes the procedures for collecting data, maintaining confidentiality, protecting human subjects, tracking field operations, and maintaining data quality control. Applicants should discuss problems that might be encountered in the field and the steps that would be taken to resolve them. The relationship between baseline data collection and data collected at other points should also be discussed.

Data Processing and Analysis Plan. The proposal should detail how data will be initially processed and data integrity assessed. This section should

also describe the range of anticipated preliminary analyses, subsequent multivariate analytic analyses, and how results will be presented. Specific examples of table shells and analytic models should be provided. The analytic relationship between core data and site-specific data should also be described.

4. Public Use Data Sets and Archiving

The proposal must contain a plan for working with the Child Care Research Collaboration and Archive (CCRCA) and with the site researchers to ensure that public use data sets produced at the end of the project are of high quality, well documented and suitable for archiving. The public use data will be archived with the CCRCA within 24 months after the project ends.

5. Project Management Plan

The Project Management Plan describes specific roles and responsibilities of each major component, presents an overall management and coordination plan, outlines individual roles and responsibilities of key staff, and demonstrates the applicant's ability to carry out the project. Resumes for key staff or position descriptions should be included along with capability statements for all participating organizations. A detailed timeline with associated personnel for all proposed activities and products must be included.

Phasing of the Intervention and Evaluation. This project is conceptualized as proceeding through five phases carried out over four years. The first phase is a planning period during which the needs and strengths of the target population will be more fully described; intervention and evaluation plans will be finalized; and pilot studies conducted. Baseline information on provider, children, and family characteristics could also be collected. In the second phase, the training intervention will be implemented with the targeted population. Data on fidelity of implementation will be collected through the training intervention period. The third phase will involve the collection of data to test for the effectiveness of the implementation. Measures and instruments to assess changes in skills, knowledge and practices in the care provider as a result of the training intervention will be utilized across all project sites. The fourth phase involves collection of data to assess maintenance of skills and practices in the care providers as well as the effects of changes in practice on child and family outcomes. The fifth phase involves integration of data across projects, analyses of individual site and coordinated project data, and reporting of findings.

Steering Committee. The Steering Committee for this cooperative agreement will consist of key project staff from the Child Care Bureau, the Evaluation Coordinator, the Site Evaluators, and the organization in charge of training delivery. The purpose of the Steering Committee is to enable managers to coordinate various components in a collaborative and integrated manner, ensure that decisions reflect their diverse needs and perspectives, and resolve issues as they arise. Members of the Steering Committee will jointly consider issues encountered in finalizing and implementing the study design, including sample development, selection of core measures, training implementation, data collection and processing, quality control and data integrity, analysis, and reporting. The Steering Committee will meet three times a year in Washington, DC, and will engage in monthly conference calls. Members of the Steering Committee will also represent this evaluation in the Child Care Policy Research Consortium. The proposal should include a brief description of how the Steering Committee would function to maximize chances for success and enhance the value of this study.

Technical Work Group (TWG). In consultation with the Child Care Bureau, a TWG of experts will be established by the grantee. The TWG will provide technical assistance and feedback to the Steering Committee in development of the final study design, selection of core measures and site-specific measures, implementation of the training intervention, data collection and analysis. The TWG will meet twice in the first year of the project and annually thereafter. The proposal should include a list of individuals who might be asked to serve on the TWG along with a justification for the recommendations.

Meetings. Applicants should budget for three meetings each year in Washington, DC, with project coordinator, other individual project representatives, and Federal staff. At least one project representative and the evaluation coordinator should attend each two-day meeting. In addition, applicants should budget for one trip a year to Washington, DC, to attend the annual Child Care Policy Research Consortium meeting. The grantee and each individual project site should be represented at this three-day meeting.

J. Evaluation Criteria

Eligible applications will be scored competitively against the published evaluation criteria described below. These criteria will be used in conjunction with the other expectations, priorities and requirements in this announcement to evaluate how well each proposal addresses the Child Care Bureau's research agenda and goals. The point values indicate the maximum numerical weight for each criterion (100 total points).

Criterion 1. Approach (35 Points)

The extent to which the proposed approach:

Provides a theoretical framework and review of relevant prior empirical evidence supporting the proposed project, including a description of the provider training intervention along with the conceptual rationale, and empirical evidence supporting the intervention.

Discusses the training models that were considered for this evaluation and justifies the decision to evaluate the model selected for implementation and evaluation.

Describes how the implementation of the training will be executed, including details about critical components of the training model and how these are linked to expected caregiver outcomes.

Provides clear, concise hypotheses or research questions and includes a logic model that illustrates the links between the training components, expected caregiver outcomes, and outcomes for families and children.

Clearly describes and provides a rationale for how participants will be selected, including exclusion and inclusion criteria (with justification), and strategies for assigning participants to groups (where appropriate).

Demonstrates that the proposed sample size is sufficient for any quantitative aspects of the evaluation.

Provides clear descriptions and rationale for the data collection procedures and measures proposed.

Provides a detailed data analysis plan that shows how the measures and analyses relate to the proposed hypotheses or research questions and demonstrates their appropriateness for the questions under consideration.

Describes an approach, *i.e.*, proposed intervention, delivery methods, targeted population and research design, that will generate data useful for making decisions about taking the intervention to scale and generalizing the results to diverse populations and settings. Discussed the strengths and weaknesses of the approach in this regard.

Discusses how advisory groups including the Steering Committee and Technical Work Group can support the work proposed under this evaluation. Describes the composition of the Technical Work Group.

Describes the activities planned for coordination of core cross-site elements of the training implementation and evaluation including how each project site will be integrated with the overall project.

Discusses how issues of diversity (across subjects with a variety of educational levels, ethnic and language minority backgrounds, and special needs) will be addressed in the implementation and evaluation of the training model.

Demonstrates the capacity for collaboration and partnerships in the delivery of the training intervention as indicated by letters of support or draft agreements.

Describes adequate protections for human subjects, confidentiality of data, and consent procedures, as appropriate.

Criterion 2. Organizational Profiles, Staff and Position Data (25 Points)

The extent to which the applicant:

Demonstrates organizational experience and expertise in the area of child care and child care research.

Describes organizational support to the implementation of this project.

Demonstrates sufficient resources, including the adequacy of time devoted to the project by key staff, to ensure a high level of professional input and attention.

Demonstrates and documents specific organizational and staff experience in developing, implementing, maintaining, and evaluating an early childhood professional development or child care provider training intervention.

Provides information on the skills, experience, and capabilities of the project director and key project staff including the principal investigators and other key staff at each site. Describes their background to manage a project of this size, scope and complexity. Brief resumes of the current and proposed staff, as well as job descriptions, are included. Resumes indicate what position each individual will fill and position descriptions specifically describe the job as it relates to the proposed project.

Provides evidence that key staff have the necessary expertise in research design, sampling, field research, data processing, statistical analysis, reporting, and information dissemination.

Describes the relationship between the proposed project and other work planned, anticipated, or underway with Federal assistance by the applicant.

Describes the management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks and ensuring quality.

Criterion 3. Objectives and Need for Assistance (15 Points)

The extent to which the applicant:

Demonstrates a solid understanding of the critical issues and research needs in child care and the need to improve caregiver knowledge, skills and practices especially in those areas targeted by the proposed approach.

Provides a literature review that is current and comprehensive, identifies other research that has addressed similar issues, and supports the need for the proposed training model and its evaluation. Describes how this evaluation will help address gaps in the research literature and unanswered questions.

Provides a conceptual model in which the research issues, objectives and hypotheses are significant, well-formulated, appropriately linked.

Describes a project framework that is appropriate, feasible and contributes to the importance, comprehensiveness, and quality of the proposed research.

Discusses issues and challenges in delivering training to caregivers who differ in terms of culture, language, education and other demographic characteristics; provide care in diverse child care settings; and serve low-income and ethnic and language minority children and families.

Criterion 4. Results or Benefits Expected (15 Points)

The extent to which the applicant:

Identifies the results and benefits of the project and describes how these will inform child care policies and services, improve practice, and advance understanding of the contexts that promote healthy development and well-being in children and families.

Discusses the extent to which the questions are of importance and relevance for low-income children and families and their development and welfare.

Describes the significance to the field of the project and describes why the approach is innovative.

Provides a list of measurable objectives or indicators that will demonstrate whether and how well the goals of the project are being met.

Addresses the extent to which the expected results of the training evaluation to be conducted will be applicable to other populations of caregivers, in other care settings or contexts.

Identifies possible barriers to achieving the proposed results and benefits and describes strategies for addressing these barriers.

Provides a dissemination plan that encompasses both professional and practitioner-oriented products.

Criterion 5. Budget and Budget Justification (10 Points)

The extent to which the applicant:

Demonstrates that the costs of the proposed project are reasonable and justified in terms of scope, approach, staff time commitment, and anticipated results. Refers to the budget information presented on Standard forms 424 and 424A and the applicant's budget justification.

Describes the fiscal control and accounting procedures that will be used to ensure prudent use, proper and timely disbursement, and accurate accounting of funds received under this announcement.

Allocates sufficient funds in the budget to provide for three project meetings in Washington D.C. as well as attendance for key project staff at the Child Care Bureau's annual meeting of its Child Care Policy Research Consortium.

Provides sufficient funds to make necessary project site visits.

Part IV. Child Care Research Scholars (Priority Area 3)

A. Purpose

Scholarships will be awarded to doctoral candidates for child care research carried out under the auspices of the Child Care Bureau and the educational institution in which the student is enrolled. The purpose of this scholarship program is to increase the number of competent researchers with a sound grasp of child care research and its implications for policies and programs. A primary goal is to foster formal mentoring relationships between faculty members and graduate students who are pursuing research in the child care field. A related goal is to promote the growth of such relationships in colleges and universities throughout the United States in order to develop the national infrastructure for high quality child care research.

Research undertaken under this program must support the Child Care Bureau's research agenda in some way, either by addressing important questions and their implications or by breaking new methodological ground.

The mentor is expected to work closely with the student to ensure that this general goal is met. The student is expected to gain significant experience and expertise in theories and methods related to child care, child development, early childhood education, child care program administration, the economics of child care, or child care policy.

To ensure that scholars have sufficient support and mentoring, each scholar works under the direct supervision of a faculty mentor who, as Principal Investigator of the project, ensures that the completed study will address important questions with a high level of technical quality. In addition, scholars whose projects involve community-based research are encouraged to work with a mentor from the field in order to gain a more comprehensive understanding of child care policies, practices, populations, and effects. Students whose work involves secondary analysis of large data sets are encouraged to work closely with one or more senior investigators on the original project. Within such nurturing and supportive relationships, students will be empowered to become autonomous researchers who are also connected to other professionals with diverse backgrounds in a variety of child care roles. These types of mentoring relationships model the principle of collaboration and foster skills needed for a research career that builds on successful partnerships and solid contributions to the scientific community.

B. Eligible Applicants

Eligible applicants include universities or colleges (including faith-based institutions) acting on behalf of graduate students who are pursuing a doctorate and who anticipate completing a child care-related dissertation. The institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council of Post-Secondary Accreditation.

C. Type and Number of Awards

Approximately four scholarship grants will be awarded. No individual educational institution will be funded for more than one candidate unless applications from different universities or colleges do not qualify for support.

D. Project Duration and Budget Periods

Scholarship grants will be funded for a period of up to 24 months (9/30/2003–9/29/2005). The first 12-month budget period will be funded through this competition. Second year awards will be considered on a non-competitive basis, subject to the availability of funds from future appropriations, satisfactory progress of the scholar, and a determination that continued funding is in the best interest of the government.

E. Funding Levels and Maximum Federal Share

Scholarship grants of up to $30,000 will be awarded for the first 12-month budget period and up to $20,000 for a second year, for a total not exceeding $50,000. All monies must be used for the student's dissertation planning or research, including required personnel costs, travel, and other expenses directly related to the research. The maximum Federal share is 100 percent of total project costs.

F. Matching Requirements

There are no matching requirements. However, because of the small size of these grants and their value to institutions of higher learning as well as to the student scholars, applicants are strongly urged to forgo any allowable indirect costs.

G. Transferability

Grants awarded as a result of this competition are not transferable to another student or to another institution.

H. Additional Requirements

The student must be a doctoral student who expects to have an approved dissertation proposal before the beginning of the grant period. A copy of the student's curriculum vita and a transcript of graduate level coursework must be included.

The student must be the author of the grant proposal and must carry primary responsibility for the research being proposed. The project must have the potential to contribute significantly to the student's career development. Research projects may include independent studies conducted by the doctoral candidate or well-defined portions of a larger study being conducted by a Principal Investigator holding a faculty position or senior research position. Research projects must use sound quantitative or qualitative research methodologies or some combination of the two.

A faculty mentor, acting on behalf of the grantee (the institution) will be listed as the Principal Investigator and is responsible for ensuring that all requirements are met and that a high quality dissertation study is completed. The application must include a letter from the faculty mentor stating that he or she approves the application and verifies the student's status in the doctoral program. The faculty member must also verify that the grant will be used to fund the student's dissertation research and include a description of how he or she will regularly monitor the student's work. A copy of the mentor's curriculum vita must be included.

The student must attend the Annual Child Care Research Consortium Meeting and present a poster describing the scholarship research. Faculty mentors are strongly encouraged to participate as well. This conference is typically scheduled during the spring of each year and is held in Washington, DC. The budget may include travel costs for both the student and the faculty mentor.

I. Evaluation Criteria

Eligible applications will be scored competitively against the published evaluation criteria described below. These criteria will be used in conjunction with the other expectations, priorities and requirements in this announcement to evaluate how well each proposal addresses the Child Care Bureau's research agenda and goals. The point values indicate the maximum numerical weight for each criterion (100 total points).

Criterion 1. Approach—Research Design and Methodology (Maximum of 40 Points)

The extent to which the applicant's proposed research design and methodology:

Appropriately links critical research issues, questions, variables, data sources, samples, and analyses.

Employs technically sound and appropriate approaches, design elements and procedures; Reflects sensitivity to technical, logistical, cultural and ethical issues that may arise and includes realistic strategies for the resolution of difficulties; Adequately protects human subjects, confidentiality of data, and consent procedures, as appropriate; Includes an effective plan for the dissemination and utilization of information by researchers, policy-makers, and practitioners in the field; and Effectively utilizes collaborative strategies, as appropriate to the project goals and design.

Criterion 2. Objectives and Need for Assistance (Maximum of 20 Points)

The extent to which the application reflects a solid understanding of critical issues, information needs, and research goals;

The extent to which the conceptual model, research issues, objectives and hypotheses are significant, well

formulated, appropriately linked, and will contribute new knowledge and understanding;

The extent to which the proposed project framework is appropriate, feasible, and would significantly contribute to the importance, comprehensiveness, and quality of the proposed research; and

The effectiveness with which the proposal articulates the current state of knowledge related to critical child care issues and the complex interrelationships among major variables, the significance of these issues and variables for child care policies and programs, how current knowledge would be brought to bear on the proposed research, and how the research would benefit various audiences.

Criterion 3: Approach—Project Management (Maximum of 20 Points)

The extent to which the project summary provides a management plan that:

Presents a sound, workable and cohesive plan of action demonstrating how the work would be carried out on time, within budget and with a high degree of quality;

Includes a reasonable schedule of target dates and accomplishments;

Presents a sound administrative framework for maintaining quality control over the implementation and ongoing operations of the study; and

Demonstrates the ability to gain access to necessary organizations, subjects, and data.

Criterion 4: Organizational Profiles (Maximum of 10 Points)

The extent to which the applicant:

Demonstrates competence in areas addressed by the proposed research, including relevant background, experience, training and work on related research or similar projects; and

Demonstrates necessary expertise in research design, sampling, field work, data processing, statistical analysis, reporting, and information dissemination.

Criterion 5. Budget and Budget Justification (Maximum of 10 Points)

The extent to which proposed costs are reasonable; the funds are appropriately allocated across component areas; and the budget is sufficient to accomplish the objectives.

Part IV. Appendices

Appendix 1—Contents and Format of the Application

Clarity and conciseness are of utmost importance. ACYF strongly encourages applicants to limit their applications to 100 pages, double-spaced, with standard one-inch margins and 12 point fonts. This includes the entire Project Narrative Statement including text, tables, charts, graphs, resumes, corporate statements and appendices.

Applicants are cautioned to include all required forms and materials, organized according to the required format. The application packet must include the following items in order:

1. A cover letter that includes the announcement number, priority area and contact information.

2. Standard Federal Forms:

a. Standard Application for Federal Assistance (SF 424 fact sheet and SF 424A) must be included with the application.

b. Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

c. Certifications Regarding Lobbying. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

d. Disclosure of Lobbying Activities. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

e. Certification Regarding Drug-Free Workplace Requirements. Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

f. Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Applicants must make the appropriate certification that they are not presently debarred, suspended, or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

g. Protection of Human Subjects: Assurance, Identification, Certification, and Declaration.

h. Certification Regarding Environmental Tobacco Smoke. Applicants must make the appropriate certification of their compliance. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

3. For-profit entities wishing to receive a grant directly must provide a letter indicating their willingness to waive their profit. Non-profit organizations must submit proof of non-profit status in the application at the time of submission. The applicant can demonstrate proof of non-profit status in any one of three ways:

a. By providing a copy of the organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c3) of the IRS code;

b. By providing a copy of the currently valid IRS tax exemption certificate; or

c. By providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

4. Executive Order 12372—Single Point of Contact.

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs'', and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities''. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodation or explain rule.

When comments are submitted directly to ACF, they should be addressed to: Office of Grants Management, 330 C Street, SW, Room #2070, Washington, DC 20447, Attn: Child Care Policy Research Discretionary Grants. A list of the Single Points of Contact (SPOCs) for each State and Territory can be found on the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Table of Contents

6. Project Abstract (not to exceed one page) for use in official briefings, decision packages, and public announcement of awards.

7. Project Narrative Statement (See instructions in Appendix 2 and Evaluation Criteria for each Priority described in this announcement.)

8. Appendices: All supporting materials and documents should be organized into appropriate appendices and securely bound to the application package. Applicants are reminded that the total page limitation applies to both narrative text and supporting materials.

a. Contact Information for all Key Staff.

b. Resumes.

c. Letters of Support, if appropriate.

d. Other.

9. Number of Copies and Binding: An original and two copies of the complete application packet must be submitted. Each copy of the application should be securely stapled in the upper left-hand corner, clipped, or secured at the top with a two-hole punch fastener. Because each application will be duplicated for the review panel, do not use non-removable binders. Do not include tabs, plastic inserts, brochures, videos, or any other items that cannot be photocopied.

Appendix 2: Uniform Project Description

Part I. The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Part 2. General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *or* by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both

Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use 45 CFR Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at 100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Dated: July 3, 2003.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–17395 Filed 7–8–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–2003–03]

Request for Applications Under the Office of Community Services' Fiscal Year 2003 Consolidated Program Announcement

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of the availability of funds and request for competitive applications under the Office of Community Services' Consolidated Program Announcement for Fiscal Year (FY) 2003.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS) invites eligible entities to submit competitive grant applications for new grants for the following OCS programs:

1. Assets for Independence Demonstration Program, CFDA # 93–602

2. Community Economic Development Program, CFDA # 93–570

3. Community Food and Nutrition Program, CFDA # 93–571

4. Family Violence Prevention and Services Program—Discretionary Funds Program, CFDA # 93–592

5. Job Opportunities for Low-Income Individuals Program, CFDA # 93–593

6. Training, Technical Assistance and Capacity-Building Program, CFDA # 93–570

The entire Consolidated Program Announcement for FY 2003 will not be published in the **Federal Register**. Rather, OCS is publishing this Abbreviated Program Announcement in the **Federal Register**. Where applicable, this Abbreviated Program Announcement contains the following information for each of the above-listed programs: CFDA Number, Legislative Authority, Eligible Applicants, Availability of Funds, Eligible Activities, Project Period, Application Due Date, and Contact Information.

ADDRESSES: Prior to submitting an application, potential applicants must obtain a copy of the Application Kit, containing the entire program announcement, forms, and instructions. The Application Kit is accessible for reading or downloading on the OCS Web site at: *http://www.acf.hhs.gov/programs/ocs/kits1.htm*. Or, by writing, calling or e-mailing the: OCS Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, 1–800–281–9519 or, E-mail: *OCS@lcgnet.com*.

Application Dates: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on (please refer to each program description for actual date). Mailed or hand carried applications received after 4:30 on the closing date will be classified as late. Mailed or hand carried applications shall be considered as meeting the announced deadline if they are received on or before the deadline time and date at The Office of Community Services Grant receipt point: OCS Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, 1–800–281–9519.

Acknowledgement of Receipt: All applicants will receive an acknowledgement notice with an assigned identification number. If an acknowledgement is not received within two weeks after the deadline date, please notify the OCS Operations Center by telephone at (703) 351–7676. Applicants are requested to supply a self-addressed mailing label with their application that can be attached to this acknowledgement notice. The identification number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. Applicants should also include an E-mail address and facsimile (FAX) number, if these resources are available to the applicant.

Program Information: The attached chart illustrates important program information for each grant program included in the OCS FY 2003 Consolidated Program Announcement.

OFFICE OF COMMUNITY SERVICES—FY 2003 CONSOLIDATED PROGRAM ANNOUNCEMENT

Name of grant program	Application deadline date	Who may apply	Approximate new funds available (in millions)	Maximum grant award	Estimated No. of awards (gramts)	Maximum project period (months)
Assets for Independence CFDA # 93–602.	8/11/03	Non-Profit 501(c)(3) Orgs, CDFI's, Low-Income Credit Unions.	$16	$1,000,000	50	60
Community Economic Development Program CFDA # 93–570, Priority Areas:	8/11/03	Private Non-Profit Community Development Corporations.	14			
Operational Projects	.....	.....	.....	700,000	9	36–60
Incremental Development	.....	.....	.....	700,000	15	36–60
Incremental Dev. (Native American).	.....	.....	.....	700,000	2	36–60
Developmental	.....	.....	.....	350,000	10	36–60
Planning Projects	.....	.....	.....	75,000	10	12
Administrative Management (AM)	.....	.....	.....	500,000	2	17
Training/Technical Assistance (UT)	.....	.....	.....	270,000	1	17
Community Food & Nutrition Program CFDA # 93–571.	8/11/03	Public/Private Non-Profit Organizations	2.1	50,000	42	12
Family Violence and Prevention and Services Program—Discretionary Funds Program CFDA # 93–592, Priority Areas:	8/11/03	Non-Profit Organizations	1.8			
FV03–01 Resource & Employment	.....	.....	.....	365,000	2	24
FV03–02 Youth Dating Violence	.....	.....	.....	250,000	1	17
FV03–03–Dom. Violence Collab.	.....	.....	.....	100,000	9	17
Job Opportunities for Low-Income Individuals Program CFDA # 93–593 Priority Areas: Business Expansion Self-Employment./Micro-Enterprise New Business Ventures Non-Traditional Projects	8/11/03	Non-Profit 501(c)(3) or 501(c)(4) Organizations.	4.5	500,000	9	36
Training, Technical Assistance and Capacity-Building Program CFDA # 93–570, Priority Areas:	8/11/03	Eligibility Varies by Priority Area—Refer to Program Description in OCS FY 2003 Consolidated Program Announcement.	1.5			
1.1 CAA Continuing Education	.....	.....		65,000	1	12
1.2 Peer-to-Peer T/A	.....	.....		40,000	3	12
1.3 Effective Self-Sufficiency	.....	.....		5,000	25	12

OFFICE OF COMMUNITY SERVICES—FY 2003 CONSOLIDATED PROGRAM ANNOUNCEMENT—Continued

Name of grant program	Application deadline date	Who may apply	Approximate new funds available (in millions)	Maximum grant award	Estimated No. of awards (gramts)	Maximum project period (months)
1.4 Knowledge Transfer Collab. ..	.....	.....		25,000	5	36
1.5 Outreach/Service to Diverse	.....	.....		7,500	10	12
1.6 Asset Formation/Financial	.....	.....		75,000	1	36
2.1 Community Building Knowledge.	.....	.....		25,000	5	36
2.2 Tech. Training and Career	.....	.....		50,000	1	12
3.1 Volunteers for Service in	.....	.....		25,000	5	12
3.2 Strengthening Participation ...	.....	.....		20,000	4	12
4.1 State Organizational Patterns	.....	.....		45,000	1	12
5.1 ROMA Implementation	.....	.....		200,000	1	36
5.2 Improving Community Action	.....	.....		80,000	1	12
6.1 Strengthening Role of Fathers.	.....	.....		40,000	3	12
6.2 Promoting Healthy Marriages	.....	.....		40,000	3	12

Evaluation Criteria: The Evaluation Criteria that will be used to review and rank applications submitted under the OCS FY 2003 Consolidated Program Announcement varies between programs and also between priority areas within a specific grant program. Applicants are urged to review the Evaluation Criteria for the program/priority area that corresponds with their application (*see http://www.acf.hhs.gov/programs/ocs/kits1.htm*).

Applicable Federal Regulations: Attachment ''P'' in the OCS FY 2003 Consolidated Program Announcement indicates the regulations that apply to all applicants/grantees under the Office of Community Services' Discretionary Grant Programs. Applicants are urged to review and familiarize themselves with these regulations prior to submitting an application under this program announcement.

All of the above information is accessible for reading or downloading on the OCS Web site at: *http://www.acf.hhs.gov/programs/ocs/kits1.htm*.

Dated: July 3, 2003.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 03–17396 Filed 7–8–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Notice of Approval of New Animal Drug Applications; Clindamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that it has approved three new animal drug applications (NADAs) or abbreviated new animal drug applications (ANADAs) in 2002 for feed combinations including a generic bacitracin zinc Type A medicated article that were not the subject of final rules. Final rules were not published because the applicable sections of the regulation did not require amendment.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: *candres@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 512(i) of the Federal Food Drug and Cosmetic Act (21 U.S.C. 360b(i)) and 21 CFR 514.105(a) and 514.106(a), FDA is providing notice that it has approved three NADAs or ANADAs in 2002 that were not the subject of final rules. Final rules were not published because the applicable sections of part 558 (21 CFR part 558) did not require amendment.

On April 29, 2002, FDA approved a supplement filed by Alpharma, Inc., to NADA 140–865 for use of single-ingredient MONTEBAN (narasin) and BACIFERM (bacitracin zinc) Type A medicated articles to make two-way combination drug Type B and Type C medicated feeds used for prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*; and for increased rate of weight gain and improved feed efficiency in broiler chickens. The supplemental NADA provided for use of Alpharma, Inc.'s ALBAC (bacitracin zinc) 50 Type A medicated article, approved under ANADA 200–223 as a generic copy of BACIFERM, in these two-way combination chicken feeds. No new data were submitted. The necessary amendment to §§ 558.78 and 558.363 were made in a final rule (65 FR 55893, September 15, 2000) for the 2000 approval of this combination for MONTEBAN and BACIFERM Type A medicated articles.

On May 15, 2002, FDA approved original NADA 141–181 filed by Alpharma, Inc., for use of single-ingredient AVATEC (lasalocid) and ALBAC (bacitracin zinc) Type A medicated articles to make two-way combination drug Type B and Type C medicated feeds for the prevention of coccidiosis caused by *E. meleagrimitis*, *E. gallopavonis*, and *E. adenoeides*, and for increased rate of weight gain and improved feed efficiency in growing turkeys. No new data were submitted. The necessary amendments to §§ 558.78 and 558.311 were made in a final rule (64 FR 26844, May 18, 1999) for the 1999 approval of Alpharma, Inc.'s NADA 141–109 for use of AVATEC and BACIFERM Type A medicated articles in two-way combination turkey feeds for identical conditions of use.

On June 24, 2002, FDA approved original ANADA 200–208 filed by Alpharma, Inc., for use of single-ingredient AVATEC (lasalocid), 3 NITRO (roxarsone), and ALBAC (bacitracin zinc) Type A medicated articles to make three-way combination drug Type B and Type C medicated feeds used for prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*; as an aid in the reduction of lesions due to *E. tenella*; and for

increased rate of weight gain or improved feed efficiency in broiler chickens. ANADA 200–208 was approved as a generic copy of Alpharma, Inc.'s NADA 126–052, for use of AVATEC, 3 NITRO, and BACIFERM (bacitracin zinc) Type A medicated articles for identical conditions of combination use. No new data were submitted. The necessary amendments to §§ 558.78, 558.311, and 558.530 were made in a final rule (47 FR 46496, October 19, 1982) for the 1982 approval of the pioneer combination.

Freedom of information summaries containing approved product labeling may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 25, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–17262 Filed 7–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[ACF–ORR–06–25–2003]

Employment Subsidy Program for Refugees With Assimilation Difficulties

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Notice of availability of FY 2003 social services discretionary funds for employment subsidy projects for refugees who have experienced long-term difficulties with assimilation.

CFDA Number: The Catalog of Federal Domestic Assistance number for this program is 93.576.

SUMMARY: The Office of Refugee Resettlement invites eligible entities to submit competitive grant applications for Employment Subsidy Projects for Refugees [1] who have experienced long-term difficulties with assimilation. These grants are intended for localities with concentrations of refugees who have experienced difficulty integrating economically and socially into local communities. Applications will be accepted pursuant to the Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(c)(1)(A)), as amended. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is August 8, 2003. *See* Part IV of this announcement for more information on submitting applications.

Announcement Availability: This program announcement and related application materials are available from the ORR Web site at: *http://www.acf.hhs.gov/programs/orr/funding.*

FOR FURTHER INFORMATION CONTACT: Jane Sommerville, Division of Community Resettlement, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Eighth Floor West, Washington, DC 20447, telephone: (202) 401–4861, e-mail: *MSommerville@acf.hhs.gov* or Daphne Weeden, Grants Officer, Division of Discretionary Grants, Office of Grants Management, 370 L'Enfant Promenade, SW., Fourth Floor West, Washington, DC 20447, telephone (202) 401–4577, e-mail *DWeeden@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background, legislative authority, funding availability, eligible applicants, project and budget periods, program purpose and objectives, and allowable activities

Part II: General Instructions for preparing a full project description and evaluation criteria

Part III: The Review Process—intergovernmental review, initial ACF screening, and competitive review

Part IV: The Application—application forms, application submission and deadlines, certifications, assurances, and disclosure required for non-construction programs, regulations, treatment of program income, and reporting requirements.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The project description is approved under OMB control number 0970–0139 which expires 12/31/03. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I: Background

The purpose of this program announcement is to increase rates of refugee employment and decrease rates of refugee welfare utilization by providing earned income subsidies to enable refugees who have experienced long-term difficulties, or who are likely to experience long-term difficulties, in assimilating into American communities with positive workforce experiences. These projects are intended to assist refugees: (1) Who have experienced long-term difficulties in assimilating into American communities or (2) who are likely to experience long-term difficulties in assimilation, including recently arrived refugees with conditions described below, older refugees, refugees with disabilities or chronic illnesses, and youth who are not enrolled in school and have little or no family support structure. These grants will provide opportunities for subsidized and unsubsidized job placements that will lead to permanent employment and economic self-sufficiency. Economic self-sufficiency contributes significantly to successful integration.

Projects funded under this announcement are intended to assist communities across this country with concentrations of refugees, many of whom entered the United States over a decade ago, who continue to experience difficulty integrating into their communities and achieving economic self-sufficiency. For some of these refugees, language skills, cultural barriers, the lack of financial resources, and years of relying on public assistance have resulted in isolating them from the mainstream, limiting their employment opportunities, and hindering their integration into American communities. Their low rate of assimilation has been documented in many localities on such key indicators as poverty levels, welfare utilization, car and home ownership, high school completion, college attendance or graduation, English language fluency, employment rates, household income, per capita income, and naturalization rates.

Projects funded under this announcement are also intended to assist communities with more recently arrived refugees who are likely to experience long-term unemployment and difficulties in assimilating. For instance, some refugees experience difficulties in employment and

[1] Eligibility for refugee social services includes: (1) Refugees; (2) asylees; (3) Cuban and Haitian entrants; (4) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants; (5) certain Amerasians from Vietnam, including U.S. citizens; and (6) victims of a severe form of trafficking (*see* 45 CFR 400.43 and ORR State Letter #01–13 as modified by #02–01 on trafficking victims). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons.

assimilation due to the long-term impacts of circumstances such as lengthy stays in refugee camps, torture, starvation, prolonged malnutrition, or other trauma prior to their arrival in the U.S. In addition, some refugees are from environments and cultural backgrounds that are so distinct from the way of life in the United States that their ability to assimilate successfully is a greater challenge than that experienced by some other refugee populations. Finally, older refugees, refugees with disabilities and/or chronic illnesses, and youth who are not enrolled in school and have little or no family support structure encounter additional difficulties in integrating into the American workforce and American society. These refugees also may experience long-term difficulties in employment and assimilation.

Legislative Authority

This program is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (INA), as amended, (8 U.S.C. 1522(c)(1)(A)), which authorizes the Director ''to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) To assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services, (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational, and other services.''

Funding Availability

ORR expects to award approximately $5 million in FY 2003 discretionary social services funds for 10 to 20 projects in amounts ranging from $200,000 to $800,000. The award amount range is for planning purposes. Applications with requested amounts that exceed the upper value of the dollar range specified will still be considered for review. No matching or cost sharing by the applicant is required.

Eligible Applicants

Eligible applicants for these funds include public and private, nonprofit agencies. Faith-based and community organizations are eligible to apply for these grants.

Private, non-profit agencies are encouraged to submit with their applications the optional survey located under ''Grant Manuals & Forms'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Project and Budget Periods

Under this announcement, ORR invites applications for project periods of up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years.

Applications for continuation grants funded under these awards, beyond the first one-year budget period but within the three-year project period, will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress and performance of the grantee, and a determination that continued funding would be in the best interest of the Government.

Program Purpose and Objectives

Projects funded under this announcement will be designed to connect long-term unemployed refugees to the labor force and to provide, through subsidized wages, earned income to refugees and their households. The purpose is to assist these refugees in making a transition to unsubsidized permanent employment and to full integration in their communities.

Refugees eligible to participate in projects funded under this announcement must be at least 18 years of age and must not be enrolled in school on a full-time basis. Refugee participants must also be unemployed, without earned income, employed part-time, or members of families receiving public assistance. Refugees are eligible to participate in this project if they have resided in the U.S. for a minimum of one year and have been residents of their communities for a minimum of three months. Refugees must demonstrate that they have exhausted other types and sources of employment services and that they are continuing to experience long-term unemployment.

ORR anticipates that refugees targeted for these programs would include long-term recipients of public assistance (12 months or more), refugees who face termination from Temporary Assistance for Needy Families (TANF) within the 12 month period following enrollment in this project, and refugees who have experienced unusually difficult circumstances in employment and in assimilation. Refugee populations such as older workers, refugees with disabilities, and at-risk youth who are at least 18 years of age, who are not enrolled in school, and who have little or no family support structure may be included as well.

Subsidized positions may be in either public or private sector organizations. Grantees must establish a network of relationships with appropriate public or private employers to identify and develop suitable subsidized positions. Through written contractual agreements, grantees may use funds to reimburse employers for up to 100 percent of the employment wage (including fringe benefits), for a maximum of nine months. In exchange for the salary subsidy, the employer agrees to provide the refugee employee additional supervisory assistance in learning the job and to retain the refugee employee in this position after the wage subsidy has ended. If insufficient funds are available to continue the position, the employer agrees to assist the refugee employee in securing other employment.

Applicants should identify the types and number of employment positions to be included in their project, including job descriptions, qualifications, salary levels, and benefits. Project participants must be paid an hourly wage equivalent to the prevailing rates of pay for persons employed in similar occupations by the same employer. No wage should be lower than the Federal minimum wage. Refugee employees must be eligible for all benefits available to all other employees at the work site.

Wage subsidies must be used for a net increase in the number of positions within a given organization and may not be used to replace currently funded positions. Refugees employed as a result of this project may not displace employed workers or workers on layoff.

Allowable Activities

Allowable activities may include, but are not limited to, the following:

- Placement of long-term unemployed refugees in subsidized positions;
- Placement of long-term unemployed refugees in unsubsidized placements;
- On-the-job training for refugee participants to obtain professional skills at the workplace; *i.e.* core office skills, office protocol, notification of sick leave, time and attendance procedures, etc.;
- Vocational English language training in conjunction with a specific position;
- Technical assistance to employers working with refugee participants;
- On-site mentoring programs between refugees and other employees;
- Provision of support services to refugees which may include: on-site

technical assistance, employment counseling, job retention counseling and activities, and work-related incidental expenses for such items as work shoes, uniforms, glasses, public transportation passes, etc., if these are not available from other sources;

- Technical assistance to vocational and educational instructors working with refugees; and
- Provision of specialized services to address the specific needs of the refugee population being assisted.

To be successful in this competition, applicants must demonstrate their capacity to implement and manage new and financially complex projects. Applicants must also describe their agency's links to the refugee populations to be assisted through this program. Finally, applicants must demonstrate a specific need for supplementation of available employment resources to place refugees with difficulties in assimilating into permanent employment.

Part II: General Instructions for Preparing a Full Project Description

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference. Pages should be numbered sequentially, including any attachments or appendices. The application narrative should be in a 12-pitch font. An executive summary should be included. Tabs should not be used.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, ORR is particularly interested in:

- Numbers, types, and average salaries of initial and subsequent subsidized and unsubsidized job placements;
- The degree to which employee benefits, including medical coverage, are available for subsidized and unsubsidized positions;
- The cost per placement into subsidized and unsubsidized positions;
- Hours per week of unsubsidized/subsidized job placements;
- Number of transitions from subsidized to unsubsidized positions, and job retention;
- Total funds used for subsidies.

The application may include other performance outcomes, as appropriate.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements

from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by including in the application:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items in the above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the optional survey located under ''Grant Manuals & Forms'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-

recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) currently set at $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application that contain this information.

Total Direct Charges, Total Indirect Charges, Total Project Costs

Self-explanatory.

Evaluation Criteria

1. *Approach*—(25 points) The applicant provides a clear explanation of a feasible, appropriate, and complete plan for establishing subsidized employment opportunities for refugee participants, including evidence of subsequent permanent employment. The proposed activities and timeframes are reasonable and feasible. The applicant has described the planning and/or consultation efforts undertaken. The applicant identifies local employers who have made commitments to the project and describes them (*e.g.*, number and types of jobs, supportive services and training, qualifications, and salary levels, *etc.*) The applicant includes a description of the proposed plan for recruitment and for selecting refugees for participation. There is a clear description of the availability and planned use of other community services and resources for refugee employment. The strategy and plan are likely to achieve proposed results and lead to increased permanent employment opportunities for refugees.

2. *Results or Benefits Expected*—(20 points) The outcomes and benefits proposed are reasonable and reflect the objectives of this announcement. The applicant clearly identifies the results and benefits to be derived for refugees and their families as well as for the community. Proposed outcomes are measurable and achievable within the grant project period, and the proposed monitoring, information collection, and documentation are appropriately designed to assess project performance.

3. *Organizational Profiles*—(20 points) Applicant organization and staff and partner organizations are well qualified and have demonstrated the capability to implement and manage new programs, to recruit and work with the refugee population, and to manage employment programs for refugees. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity and planning activities, are described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. The qualifications of project staff are documented. The applicant has provided a copy of its most recent audit report. If appropriate, written agreements between grantees and sub-grantees or other cooperating entities, detailing work to be performed, remuneration, and other terms and conditions that structure or define the relationship to this project, are provided.

4. *Budget and Budget Justification*—(20 points) The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. The methodologies for estimating the number of refugee participants are reasonable. The projected cost per job placement is reasonable.

5. *Objectives and Need for Assistance*—(15 points) The applicant identifies and documents the characteristics of the refugee population and/or community to be assisted and clearly describes the need for subsidized employment for this population. Indicators of the need for assistance and of low rates of assimilation may include reliance on public assistance, incomes below 200 percent of the Federal poverty level, and low rates of employment, education, access to financial institutions, and car and home ownership.

Part III: The Review Process

Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming have elected not to participate in the Executive Order process. Applicants from these twenty-six jurisdictions need take no action

regarding E.O. 12372. Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants should contact their Single-Points-of-Contact (SPOC) as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants from participating jurisdictions must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (the date of contact) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Daphne Weeden, Grants Officer, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Fourth Floor West, Washington, DC 20447.

A list of the Single Points of Contact for each participating State and Territory can be found on the web at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Initial ACF Screening—Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement; and (2) the applicant is eligible for funding.

Competitive Review—Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of evaluation criteria specified below. The evaluation criteria were designed to assess the quality of a proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Part IV: The Application

Application Forms—In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Applicants requesting financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Application materials, including forms and instructions, are available from the ORR Web site at *http://www.acf.hhs.gov/programs/orr/funding.* The application materials are also available from the Contact named in the preamble of this announcement.

Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers.

Application Submission and Deadlines—An application with an original signature and two clearly identified copies are required. Applicants must clearly indicate on the SF 424 the grant announcement number under which the application is submitted. Applicants have the option of omitting from the application copies (not from the original) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on August 8, 2003. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Attention: Daphne Weeden, Grants Officer, 370 L'Enfant Promenade, SW., Fourth Floor West, Washington, DC 20447. ACF will acknowledge receipt of applications. Receipt of applications will be acknowledged by letter. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Applications handcarried by applicants, by applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EDT, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, ACF Mailroom, Second Floor (near loading dock), Aerospace Building, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: Daphne Weeden, Grants Officer.''

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications—Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines—ACF may extend application deadlines when circumstances such as acts of God (*e.g.*, floods, hurricanes, etc.) occur or when there are widespread disruptions of mail service.

Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines, Contact: Daphne Weeden, Grants Officer, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Fourth Floor West, Washington, DC 20447, Telephone: (202) 401–4577.

Certifications, Assurances, and Disclosure Required for Non-Construction Programs—Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a signed certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988.

By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended, or otherwise ineligible for the award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). A copy of the **Federal Register** notice that implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Administrative Grant Regulations—Applicable U.S. Department of Health and Human Services regulations can be found in 45 CFR part 74 or part 92.

Treatment of Program Income—Program income from activities funded under this program may be retained by the recipient and added to the funds committed to the project, and used to further program objectives. Program income must be reported semi-annually on the Financial Status Report (SF–269).

Post-Award Reporting Requirements—Grantees are required to file the Financial Status Report (SF–269) semi-annually and the Program Performance Reports quarterly. The Program Performance Reports should provide adequate data to assess the extent to which the grantee is achieving the goals of this grant announcement. Funds issued under these awards must be accounted for, and reported upon, separately from all other grant activities. The official receipt point for all reports and correspondence is the Grants Officer, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., Fourth Floor West, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Office of Grants Management.

A final Financial Status Report and Program Performance Report shall be due 90 days after the project expiration date or termination of federal budget support.

Dated: July 1, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–17398 Filed 7–8–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Administration for Children and Families; Refugee Microenterprise Development Program

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Corrective Notice for: Announcement of availability of FY 2003 social services discretionary funds for refugee microenterprise development projects.

CFDA Number: The Catalog of Federal Domestic Assistance number for this program is 93.576. The title of the program is the RefugeeMicroenterprise Development Program.

SUMMARY: The purpose of this notice is to correct an error that was printed in notice 68 FR 38371 on June 27, 2003. The Office of Refugee Resettlement (ORR) invites eligible entities to submit competitive grant applications for microenterprise development projects for refugees. Applications will be accepted pursuant to the Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(c)), as amended. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

Eligibility for refugee social services includes: (1) Refugees; (2) asylees; (3) Cuban and Haitian entrants; (4) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants; (5) certain Amerasians from Vietnam, including U.S. citizens; and (6) victims of a severe form of trafficking (see 45 CFR 400.43 and ORR State Letters Number 01–13 as modified by Number 02–01 on trafficking victims). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons. Additional information on eligibility is available at: *http://www.acf.hhs.gov/programs/orr/policy/s101–13.htm* and *http://www.acf.hhs.gov/programs/orr/policy/s102–01.htm.*

SUPPLEMENTARY INFORMATION: This notice is a correction notice of 68 FR 38371 that was published on June 27, 2003. This notice contains the final date for receipt of applications for funding available through this program. The closing date for receipt of applications is July 28, 2003.

DATES: The closing date for submission of applications is July 28, 2003. See Part IV of this announcement for more information on submitting applications.

Announcement Availability: This program announcement and the application materials are available on the Office of Refugee Resettlement Web site at *http://www.acf.hhs.gov/programs/orr/funding.*

FOR FURTHER INFORMATION CONTACT: Lisa Campbell, Division of Community Resettlement, Office of Refugee Resettlement, Administration for Children and Families, at (202) 205–4597 or *LCampbell@ACF.HHS.GOV* or Daphne Weeden, Division of Discretionary Grants, Office of Grants Management, Administration for Children and Families, at (202) 260–5980 or *paqueries-ogm@acf.hhs.gov.*

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–17397 Filed 7–8–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14471]

National Maritime Security Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Notice of committee establishment and request for applications.

SUMMARY: Under the Federal Advisory Committee Act, the Secretary of Homeland Security is establishing the National Maritime Security Advisory Committee (NMSAC) pursuant to the Maritime Transportation Security Act of 2002, Public Law 107–295, and requesting qualified individuals interested in serving on this committee to apply for membership.

DATES: Application forms for membership should reach the Coast Guard on or before August 8, 2003.

ADDRESSES: You may request a copy of the charter for the National Committee or a form to apply for membership by writing to Lieutenant Junior Grade Holly Wendelin, Commandant (G–MPS–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20590–0001; by calling 202–267–4132; or by faxing 202–

267–4130. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions, call Lieutenant Junior Grade Holly Wendelin at 202–267–4132.

SUPPLEMENTARY INFORMATION:

Establishment of the National Maritime Security Advisory Committee. The Federal Advisory Committee Act (FACA), Public Law 92–463, 86 Stat. 470 (5 U.S.C. App. 2), governs the establishment of committees by Federal agencies. Section 102 of the Maritime Transportation Security Act of 2002 (Public Law 107–295) added section 70112 to Title 46 of the U.S. Code which requires the Secretary of the Department in which the Coast Guard is operating to establish a National Maritime Security Advisory Committee.

The NMSAC will advise, consult with, report to, and make recommendations to the Secretary on matters relating to national maritime security. Such matters may include, but not be limited to:

- developing a national strategy and policy to provide for efficient, coordinated and effective action to deter and minimize damage from maritime related transportation security incidents;
- recommending actions required to meet current and future security threats to ports, vessels, facilities, waterways and their associated inter-modal transportation connections and critical infrastructure;
- promoting international cooperation and multilateral solutions to maritime security issues;
- addressing security issues and concerns brought to the Committee by segments of the maritime transportation industry, or other port and waterway stakeholders; and,
- examining such other matters, related to those above, that the Secretary may charge the Committee with addressing.

FACA requires advisory committees to meet at least yearly. However, we anticipate that NMSAC will meet more frequently. Subcommittees of NMSAC may also meet between meetings of the parent committee. Most meetings will be held at Coast Guard Headquarters in Washington, DC, but some meetings may be held at locations around the country.

Request for Applications to the NMSAC

NMSAC will be composed of seven members each of whom must have at least 5 years practical experience in maritime security operations. Applicants may be required to pass an appropriate security background check prior to appointment to the committee.

Applicants should submit their application on Form DOT F 1120.1 to Commander Scott at the address given in the **ADDRESSES** section at the beginning of this Notice. The application form is available from Lieutenant Junior Grade Wendelin by calling her at 202–267–4132, or by going to the docket for this notice [USCG–2003–14471] at *http://dms.dot.gov.*

Members' terms of office will be for up to 5 years; however, to permit orderly turnover of the committee's membership, terms of office will be staggered, and the members initially appointed to NMSAC will be appointed to terms of 3, 4 or 5 years. Members will be eligible to serve an additional term of office. While attending meetings or when otherwise engaged in committee business, members will be reimbursed for travel expenses as permitted under applicable Federal travel regulations. However, members will not receive any salary or other compensation for their service on the National Committee.

In support of the policy of the U.S.C.G. on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: July 2, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–17371 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–38]

Notice of Submission of Proposed Information Collection to OMB: Application for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0191) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG).

OMB Approval Number: 2577–0191.

Form Numbers: 4123, 4125, 4126, and Standard HUD Grants forms 424, 50070, 2880, 2992, 2993, 2994.

Description of the Need for the Information and Its Proposed Use: Application for funding of Indian and Alaska Native Community Development

Block Grants for the development of decent housing, environment, and economic opportunities for low and moderate-income persons.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On occasion, Monthly, Quarterly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	225	5.44		7.61		9,325

Total Estimated Burden Hours: 9,325.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 25, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–16984 Filed 7–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–37]

Notice of Submission of Proposed Information Collection to OMB: Accountability in the Provision of HUD Assistance—''Applicant/Recipient Disclosure/Update''

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2510–0011) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Accountability in the Provision of HUD Assistance—''Applicant/Recipient Disclosure/Update''

OMB Approval Number: 2510–0011.

Form Numbers: HUD–2880.

Description of the Need for the Information and its Proposed Use: Applicants for assistance are required to disclose information concerning other governmental assistance they have obtained or is pending for the same project, as well as information about the key individuals involved with the proposed project/activity. A $200,000 threshold applies to this disclosure requirement.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, as needed.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	13,520	16,900		2.4		40,560

Total Estimated Burden Hours: 40,560.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 25, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–16985 Filed 7–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–39]

Notice of Submission of Proposed Information Collection to OMB: Management Review Report for Unsubsidized Multifamily Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0259) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Management Review Report for Unsubsidized Multifamily Housing Programs.

OMB Approval Number: 2502–0259.

Form Numbers: HUD–9838.

Description of the Need for the Information and Its Proposed Use: Multifamily housing lenders collect the Management Review information to evaluate the adequacy of the management of subject projects and to monitor and evaluate the ongoing management operations and procedures of multifamily projects.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion during on-site reviews.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	100	100		7		700

Total Estimated Burden Hours: 700.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 25, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–16986 Filed 7–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–40]

Notice of Submission of Proposed Information Collection to OMB: Continuum of Care Homeless Assistance Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0112) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Application.

OMB Approval Number: 2506–0112.

Form Numbers: HUD 40076 CoC, HUD 40085–2, HUD 40076–2, Grant Forms SF LLL, HUD 2994, HUD 2993, HUD 23004, HUD 2880.

Description of the Need for the Information and Its Proposed Use: Information collected will be used to rate applications, to determine eligibility for the Continuum of Care Homeless Assistance, to establish grant amounts, and to ensure that technical requirements are met prior to execution of a grant agreement.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	3,340	5,000		40.1		200,260

Total Estimated Burden Hours: 200,260.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 26, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–16987 Filed 7–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–41]

Notice of Submission of Proposed Information Collection to OMB: Mortgagee's Certification and Application for Interest Reduction Payments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0445) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Certification and Application for Interest Reduction Payments.

OMB Approval Number: 2502–0445.

Form Numbers: HUD–3111.

Description of the Need for the Information and Its Proposed Use: The information is used by HUD to verify and disburse interest reduction payments to HUD approved mortgagees servicing non-insured multifamily mortgages.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	100	1,200	....	0.33	....	396

Total Estimated Burden Hours: 396.

Status: Reinstatement, without change, of previously approved.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 30, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–16988 Filed 7–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–42]

Notice of Submission of Proposed Information Collection to OMB: Notice of Application for Designation as a Single Family Foreclosure Commissioner (Single Family Mortgage Foreclosure Act of 1994 (FR–3950)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2510–0012) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Notice of Application for Designation As a Single Family Foreclosure Commissioner (Single Family Mortgage Foreclosure Act of 1994 (FR–3950).

OMB Approval Number: 2510–0012.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: HUD may exercise a nonjudicial power of sale of single-family HUD-held mortgages and may appoint foreclosure commissioners. Information collected will determine that applicants that are to be designated as foreclosure commissioners meet the statutory requirements.

Respondents: Individuals or households, Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	30	0.5		15		15
Total Estimated Burden Hours						15

Total Estimated Burden Hours: 15

Status: Reinstatement, without change, of previously approved.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 3, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–17394 Filed 7–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Education Facilities Replacement Construction Priority List as of FY 2003

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: As required by statute, the Bureau of Indian Affairs (BIA or Bureau) is publishing the FY 2003 Education Facilities Replacement Construction Priority List in the **Federal Register**. The current priority list, last published in the **Federal Register** on January 9, 2001, is revised by the addition of newly prioritized schools, which were evaluated and ranked during the 2001 replacement school application process. The Bureau will use this list to determine the order in which Congressional appropriations are requested to fund education facilities replacement construction projects. Construction funding is not yet available for all projects on the list.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Education Facilities Replacement Construction Priority List may be submitted to the attention of Andrew Acoya, AIA, Office of Facilities Management and Construction, P.O. Box 1248, Albuquerque, New Mexico 87103, (505) 346–6508, Fax (505) 346–6542.

SUPPLEMENTARY INFORMATION: Publication of the Education Facilities Replacement Construction Priority List (Priority List) in the **Federal Register** is required by 25 U.S.C. 2005(d) at the time any budget request for school

construction is presented. In 2001, the Bureau began preparations for developing a new Priority List, including the acceptance of applications from Tribes and School Boards who wished to have schools placed on the Priority List.

Schools placed on the previously published ''Education Facilities Construction Priority List as of FY 2000, With Additions,'' published in the **Federal Register** on January 9, 2001 (66 FR 1689) that were not yet fully funded for construction (project numbers 18 through 20), did not have to submit applications for ranking on the new Priority List and are retained, in order, at the top of the FY 2003 Priority List as projects numbers 1 through 3. Education Facilities Construction projects on the Priority List will be funded for construction in the order in which they are ranked, as appropriations become available, unless a school is not ready for the next phase of funding. In accordance with Congressional directives, the projects do not provide for new school starts nor grade level expansions. The process does not provide for charter schools nor satellite extensions.

The Conference Report for the FY 1992 Interior Related Agencies Appropriations Act, H.R. Conf. Rep. No. 102–256, at 46 (1991), indicated that Congress wanted the Department to revise the priority ranking process for new school construction. The Bureau revised the process in March 1999 and again in May 2001, and developed draft revised instructions and criteria, complying with the 1991 Conference Report requirements that the BIA should emphasize tribal consultation and improve the objectivity of the ranking process, provide continuity to the priority ranking list, and provide procedures for handling emergency needs.

The Committee on Appropriations also recommended that the BIA establish a demonstration project to allow tribes with schools on the replacement list to apply for Federal funding with the guarantee of a cost share from the tribe, S. Rep. No. 106–99, at 54 (1999). Congress further stated that tribes may share the cost of construction of their school, identify non-Bureau funding to match or supplement Bureau funding, or pay future operations costs in exchange for the full funding of school construction costs earlier than they might hope to receive it under the Priority List. Accordingly, in the ranking process for the FY 2003 Priority List, applicants were provided an opportunity to indicate a commitment to cost share; however, none of the top ranked schools offered to do so.

The Bureau published in the **Federal Register**, on April 18, 2001 (66 FR 19979), a Notice of tribal consultation meeting May 1 through May 3, 2001, in Albuquerque, New Mexico, requesting comments on the draft revised instructions and criteria, entitled ''Instructions and Application for Replacement School Construction, 2001.'' The new instructions governed the priority ranking process for construction of replacement education facilities and the criteria used in ranking applications. In addition to fully replacing buildings and support structures at an educational facility, a new category, partial replacement construction, was included in the 2001 application process in response to earlier consultation comments. Under the new category, schools could submit partial replacement construction requests for replacement of a specific building or buildings instead of full facilities replacement, or the schools could request construction of components (*e.g.,* libraries, gymnasiums, cafeterias) that do not currently exist at educational facilities but are nonetheless required to meet an approved educational accreditation program. After the Bureau completes further study and evaluation, a final determination will be made whether facilities projects added to the Priority List will be fully or partially replaced. Bureau requests for future funding of education facilities construction projects will not depend entirely on ranking order, but will also consider how full or partial replacement projects fit the availability of appropriations, and readiness for the next phase of funding.

Comments were also received relating to administrative requirements and responsibilities; definitions of ranking criteria; evaluation of applications; and cost-sharing. The comments were reviewed and incorporated into the final instructions and criteria as appropriate by a team consisting of tribal representatives and BIA employees from the Office of Indian Education Programs and the Office of Facilities Management and Construction. The Bureau proceeded with using the final revised application instructions and criteria on June 8, 2001.

Copies of the final revised instructions and ranking criteria with accompanying documents were sent to all BIA schools and schools that receive BIA funds under contract or grant, [Catalog of Federal Domestic Assistance Program Number: 15.062 ''Replacement and Repair of Indian Schools''] and the Bureau held tribal consultation meetings in July and August 2001 on the revised process. BIA's Office of Indian Education Programs Education Line Officers offered training to applicants at all schools under their administrative jurisdiction on how to complete applications using the revised instructions and ranking criteria. Tribes and BIA-funded school boards received advance, written notice of training session dates, times, and locations for tribes and schools under their respective jurisdictions. The Bureau published another Notice in the **Federal Register** on June 11, 2001 (66 FR 31248), calling for applications based on the revised instructions and ranking criteria. The Bureau accepted applications beginning August 1, 2001, and used the criteria in the revised instructions to review and evaluate all applications that were received on or before the application deadline. The application deadline was extended to October 22, 2001, by a notice published in the **Federal Register** on August 20, 2001 (66 FR 43591), in response to requests of tribal organizations and school boards. These applications were evaluated and ranked according to the revised criteria stated in the application and, from the list of ranked schools, the first nine schools were placed on the FY 2003 Education Facilities Replacement Construction Priority List.

This notice is published under authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs in the Departmental Manual at 209 DM 8.

Education Facilities Replacement Construction Priority List as of FY 2003

1. Turtle Mountain High School
2. Mescalero Apache School
3. Enemy Swim Day School
5. Navajo Preparatory School
6. Wingate High School
7. Pueblo Pintado Community School
8. Bread Springs Day School
9. Ojo Encino Day School
10. Chemawa Indian School
11. Beclabito Day School
12. Leupp School

Aurene Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–17343 Filed 7–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1220–ET; WYW 34993]

Notice of Proposed Extension of Public Land Order No. 6578; Opportunity for Public Meeting; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to extend Public Land Order No. 6578 for a 20-year period. This order withdrew public lands from settlement, sale, location, and entry under the general land laws, including the mining laws, to protect the Castle Gardens Recreation Area in Washakie County. The lands have been and will remain open to mineral leasing. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by October 7, 2003.

ADDRESSES: Comments and meeting requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth at 307–775–6124.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to extend Public Land Order No. 6578. This withdrawal was made to protect the important recreational and aesthetic values as well as the capital investments of the Castle Gardens Recreation Area. Public Land Order No. 6578 will expire on November 22, 2004.

The withdrawal comprises approximately 110.00 acres of public land as described below:

Sixth Principal Meridian

T. 46 N., R. 89 W.,
Sec. 15, SE¼NW¼, S½NE¼NW¼, NE¼SW¼NW¼, E½NW¼SW¼NW¼, S½SE¼NW¼NW¼, NE¼SE¼NW¼NW¼, N½SE¼SW¼NW¼, SE¼SE¼SW¼NW¼, and N½NE¼SW¼.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the undersigned officer of the BLM.

Comments, including names and street addresses of respondents, will be available for public review at the Worland Field Office, 101 South 23rd Street, Worland, Wyoming, during regular business hours 7:30 a.m. to 4:30 p.m. Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension should submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This extension will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Dated: July 1, 2003.

Robert A. Bennett,

State Director.

[FR Doc. 03–17391 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–3–1430–EU]

Realty Action; Recreation and Public Purpose Act Classification; Door County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Recreation and Public Purposes Act Classification; Wisconsin.

SUMMARY: The following public lands near the community of Fish Creek in Door County, Wisconsin have been examined and found suitable for classification for lease or conveyance to the State of Wisconsin Department of Natural Resources (DNR), under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*). Therefore, in accordance with Section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f) and EO 6964, the following described lands are hereby classified as suitable for disposal under the provisions of the R&PP Act of 1926, as amended (43 U.S.C. 869 *et seq.*) and, accordingly, opened for only that purpose.

Fourth Principal Meridian

T. 31 N., R. 27 E.,
Eagle Bluff Light Station Reservation, located in Fractional Northeast Quarter of Section 17, being more particularly described as:
Beginning at the Triangulation Station ''Eagle Bluff'', 1874, 1934, 1953, T. 31 N., R. 27 E.
Thence,
N. 89° 50′ E, 0.227 chains to the WC MC, the place of beginning,
S. 49° 05′ E., 3.135 chains, to Angle Point #1,
N. 38° 17′ E., 2.502 chains, to Angle Point #2,
N. 40° 10′ 4.001 chains, to MC on the present shoreline of Green Bay,
Thence with meanders of Green Bay,
S. 59° 35′ W., 1.14 chains,
S. 37° 38′ W., 1.90 chains,
S. 30° 23′ W., 0.15 chains to MC on the present shoreline of Green Bay,
Thence,
S. 49° 05′ E., 1.160 chains to WC MC, the place of beginning, as shown on the plat of survey for the Eagle Bluff Light Station accepted for the Director on October 18, 2001.
The area described contains 1.21 acres in Door County

The Wisconsin DNR proposes to integrate the lands into existing Peninsula State Park. This action classifies the lands identified above for disposal through the R&PP Act of 1926 (43 U.S.C. 869 *et seq.*) to protect the historic light station and the surrounding lands. The subject land was identified in the Wisconsin Resource Management Plan Amendment, approved March 2, 2001, as not needed for Federal purposes and having potential for disposal to protect the historic structures and surrounding lands. Lease or conveyance of the land for recreational and public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Milwaukee Field Office, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order dated October 19,

1866, a parcel of public land totaling 8.8 acres located in Door County, Wisconsin, was reserved for lighthouse purposes. The parcel contained the Eagle Bluff light station located on the eastern shore of Green Bay near the village of Fish Creek, Wisconsin.

On May 28, 1935, through an Act of Congress, the Secretary of Commerce was authorized to dispose of certain lighthouse reservations. Section 28 of that Act authorized the Secretary of Commerce to convey that portion of the Eagle Bluff lighthouse reservation no longer needed for lighthouse purposes to the State of Wisconsin for public park purposes. The Secretary of Commerce conveyed these lands, approximately 7.68 acres, through a deed dated May 9, 1936. The remaining lands continued to be reserved by the 1866 Executive Order after 1936. The Department of Transportation, United States Coast Guard, submitted a Notice of Intent to relinquish custody, accountability and control of the remaining 1.21 acres. The Bureau of Land Management has recommended that the remaining lands be determined suitable for return to their former status as public lands, such determination to be made by the Secretary of the Interior and accomplished by the issuance of a public land order revoking the Executive Order as to the remaining lands. A proposed public land order for this purpose currently is pending and awaiting action within the Department.

The State of Wisconsin DNR has applied for patent to the land under the R&PP Act of 1926, as an addition to Peninsula State Park.

The lease/patent when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the R&PP Act of 1926, as amended and to all applicable regulations of the Secretary of the Interior.

2. Valid existing rights.

3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Terms and conditions identified through the site specific environmental analysis.

5. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all forms of disposal or appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days after issuance of this notice, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203.

Classification Comments: Interested parties may submit comments involving the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for inclusion in the state park, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, the development plan, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for inclusion in the state park.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: May 9, 2003.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 03–17389 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–128–6332–PD, 3–0166]

Notice of Proposed Supplementary Rule on Public Land in Oregon

AGENCY: Bureau of Land Management, Coos Bay District, Oregon, Interior.

ACTION: Proposed supplementary rule for public land within Bear Creek Recreation Site, Coos Bay District, Oregon.

SUMMARY: The Bureau of Land Management (BLM)'s, Coos Bay District, Myrtlewood Field Office is proposing a supplementary rule to change the occupancy and camping stay limit at Bear Creek Recreation Site from 14 days to 24 hours. This rule will apply to the public lands within the Bear Creek Recreation Site in the Myrtlewood Resource Area, Coos Bay District, Douglas County, Oregon. The supplementary rule is needed because the area has experienced numerous and persistent site management problems such as: Assault, illicit drug sales and use, and public drunkenness. The supplementary rule is intended to protect the area's natural resources and provide for public health and safety.

DATES: The BLM requests comments from the public concerning this supplementary rule. The comment period will be open until August 8, 2003. In developing the final rule, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: *Mail:* Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, OR, 97459.

Internet e-mail: *coos_bay@or.blm.gov* (Include Attn: ''Myrtlewood Field Manager'')

FOR FURTHER INFORMATION CONTACT: Richard Conrad, Myrtlewood Field Manager, 1300 Airport Lane, North Bend, OR, 97459, telephone (541) 756–0100.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of the Supplementary Rule.
III. Procedural Matters.

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at BLM's Internet home page: *www.blm.gov.* You may also comment via the Internet to *coos_bay@or.blm.gov* (Include Attn: Myrtlewood Field Manager''). If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (503–756–0100).

Written Comments

Written comments on the proposed supplementary rule should be specific, confined to issues pertinent to the proposed supplementary rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment addresses. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (*See* **DATES**) or comments delivered to an address other than those listed above (*See* **ADDRESSES**).

Comments, including names, streets addresses, and other contact

information about respondents, will be available for public review at (address) during regular business hours (7:45 a.m. to 3:45 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Discussion of the Supplementary Rule

This supplementary rule will apply to the public lands within the Bear Creek Recreation Site. Bear Creek Recreation Site is an 8-site campground located along a remote stretch of State Highway 42, approximately 30 miles east of Myrtle Point, Oregon, or 30 miles west of Roseburg, Oregon, within Section 9 of Township 30 South, Range 9 West of the Willamette Meridian. Since the early 1960s, Bear Creek has been a popular stop for travelers between Roseburg and Coos Bay. Although camping is permitted, visitor use surveys have shown the site is used primarily as a ''highway rest stop.'' A reroute of State Highway 42 in the late 1970s significantly diminished the rustic character of the site as a campground. Due to its remote location and distance from the Coos Bay District Office, it has been difficult for BLM personnel to maintain an adequate presence at Bear Creek. As a result, there have been numerous and persistent site management problems such as: Assault, illicit drug sales and use, public drunkenness, unsanitary conditions and activities, intimidation of visitors, vandalism, litter, violation of stay limit, *etc.* BLM proposes to reduce the occupancy and camping stay limit from 14 days to 24 hours. Overnight camping will still be permitted; however, after 24 hours, occupants must move with all of their personal possessions and cannot camp on BLM administered land within a 10-mile radius for 14 days. BLM has determined this rule necessary to protect the area's natural resources and to provide for safe public recreation, public health, and reduce the potential for damage to the environment and to enhance the safety of visitors and neighboring residents.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This supplementary rule is not a significant regulatory action and is not subject to review by Office of Management and Budget under Executive Order 12866. This supplementary rule will not have an effect of $100 million or more on the economy. It is not intended to affect commercial activity, but merely revises a camping stay limit. It will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make the proposed supplementary rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rule clearly stated?

(2) Does the proposed supplementary rule contain technical language or jargon that interferes with clarity?

(3) Does the format of the proposed supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rule be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the supplementary rule easier to understand?

Please send any comments you have on the clarity of the supplementary rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has determined that this proposed supplementary rule changing the occupancy and camping stay limit at Bear Creek Recreation Site from 14 days to 24 hours is a purely administrative action. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that the proposed supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This supplementary rule does not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rule merely revises a camping stay limit. The supplementary rule has no effect on business—commercial or industrial—use of the public lands.

Unfunded Mandates Reform Act

This supplementary rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor does the proposed

supplementary rule have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rule does not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rule does not represent a government action capable of interfering with Constitutionally-protected property rights. The rule merely revises a camping stay limit. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism [Replaces Executive Orders 12612 and 13083.]

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule merely revises a camping stay limit. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. The rule merely revises a camping stay limit.

Paperwork Reduction Act

This supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of this supplementary rule is Richard Conrad, Myrtlewood Field Manager, Coos Bay District, Bureau of Land Management

For the reasons stated in the preamble, and under the authority of 43 CFR 8365.1–6, we issue the following supplementary rule:

Elaine M. Brong,

Oregon/Washington State Director.

Supplementary Rule for Bear Creek Recreation Site

Under 43 CFR (subpart 8365.1–6), the Bureau of Land Management will enforce the following rule on the public lands within the Bear Creek Recreation Site, Myrtlewood Resource Area/Field Office, Coos Bay District, Oregon.

Sec. 1 Stay limit at Bear Creek Recreation Site

You must not leave personal possessions or stay at Bear Creek Recreation Site longer than twenty-four (24) hours. After twenty-four (24) hours, you must leave with all of your personal possessions and must not camp on BLM-administered land within a 10-mile radius for 14 days.

Sec. 2 Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, if you violate this supplementary rule on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

[FR Doc. 03–17390 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–056–1220–AA–GP–03–0127]

Special Rules for Public Lands Along the Deschutes Wild & Scenic River

AGENCY: Bureau of Land Management, Prineville District, Oregon, Deschutes Resource Area.

ACTION: Proposed special rules for public land and waters within the Lower Deschutes National Wild and Scenic River corridor, Deschutes Resource Area, Prineville District, Oregon.

SUMMARY: The Bureau of Land Management's (BLM) Deschutes Resource Area is revising its special rules for the Lower Deschutes National Wild and Scenic River corridor in Oregon. The special rules are necessary in order to protect the river's natural resources and the public health and safety. The revisions in the special rules are needed to resolve inconsistencies between them and rules of the State of Oregon.

DATES: You should submit your comments by August 8, 2003. In developing final rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Mail or personal delivery: Bureau of Land Management, Deschutes Resource Field Manager, Prineville District Office, 3050 NE Third, Prineville, OR 97754.

Direct internet response: *federalregister@or.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Towne, Field Manager for the Deschutes Resource Area, at (541) 416–6700. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Area Description

Public lands and waters within the Lower Deschutes River Final National Wild and Scenic River Boundary, as it appears in the Lower Deschutes River Management Plan and Environmental Impact Statement, volume 1, published January 1993 by BLM (this document contains a compete legal description; copies available from the BLM Prineville District Office). This area is more generally described as approximately ¼ mile from either side of the Lower Deschutes River, commencing at Pelton Reregulation Dam and extending downstream to the Columbia River.

II. Background

In 1970, the lower 100 miles of the Deschutes River were designated as an Oregon State Scenic Waterway. In 1988, the U.S. Congress designated this same 100 mile river segment as a National

Wild and Scenic River. Through a management plan approved in 1993, this area is collectively managed by the Bureau of Land Management, the Bureau of Indian Affairs/Confederated Tribes of the Warm Springs, and the State of Oregon. In 1994, pursuant to the management plan, separate rules for public use were created by the State of Oregon in the form of Oregon Administrative Rules and by BLM in the form of Special Rules under 43 CFR 8351.2.

Both the state and BLM developed rules independently and in many particulars they proved inconsistent with each other. Since inception, both state and Federal rules have undergone multiple revisions to accommodate changing management needs and objectives. The proposed special rules will revise the existing Federal rules to match state rules, combine all Federal rules, including past revisions, into one document, and create new rules to meet current management objectives.

The rules will govern conduct on all public lands and waters managed by BLM within the river corridor described in the notice. The rules are needed in order to protect the river's natural resources and the public health and safety.

III. Public Comment Procedures

A. How Do I Comment on the Proposed Special Rules?

If you wish to comment, you may submit your comments by any one of several methods.

You may mail comments to Deschutes Resource Field Office Manager, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, Prineville, Oregon 97754.

You may deliver comments to Deschutes Resource Field Office Manager, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, Prineville, Oregon 97754.

You may comment via email at *tteaford@or.blm.gov.* If you do not receive a confirmation that we have received your electronic message, contact us directly at 541–416–6700.

Please submit your comments on issues related to the proposed special rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed special rules should be specific, should be confined to issues pertinent to the proposed special rules, and should explain the reason for any change you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include, in the Administrative Record for the final special rules, comments that BLM receives or were delivered to an address other than those listed above.

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under ''**ADDRESSES**: Mail or personal delivery'' during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays.

We will honor, to the extent allowed by law individual respondents request for confidentiality. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations, businesses, and individuals identifying themselves as representatives or officials of organizations or businesses, available to public inspection in their entirety.

IV. Discussion of the Rules

BLM has determined these rules necessary to protect the river's resources and to provide for safe public recreation, public health, and data collection. The objective is to provide a quality recreational experience to the general public with minimal user conflicts and minimum damage to the public lands and resources.

In addition, these rules are in accordance with the January 1993 Lower Deschutes River Management Plan and Environmental Impact Statement.

Exemptions to these rules will apply to cooperating agency personnel for administrative purposes, including but not limited to, monitoring, research, law enforcement, search and rescue, and fire fighting operations. BLM may also allow exemptions on a case by case basis.

V. Procedural Matters

Tom Teaford of the BLM Prineville District Office is the principal author of these proposed special rules.

Regulatory Planning and Review (E.O. 12866)

These special rules are not significant and are not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) These special rules will not have an effect of $100 million or more on the economy. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) These special rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) These special rules do not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) These special rules do not raise novel legal or policy issues.

The special rules will not affect legal commercial activity, but contain rules of conduct for public use of a limited selection of public lands.

Regulatory Flexibility Act

The Department of the Interior certifies that these special rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*). The special rules will not affect legal commercial activity, but will govern conduct for public use of a limited selection of public lands.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These special rules are not major under *5 U.S.C. 804(2)*, the Small Business Regulatory Enforcement Fairness Act. These special rules:

Do not have an annual effect on the economy of $100 million or more. (*See* the discussion under Regulatory Planning and Review, above.)

Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. *See* the discussion above under *Regulatory Flexibility Act.*

Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

These special rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The special rules do not have a significant or unique effect on state, local, or tribal governments or the private sector. The special rules will have no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (*2 U.S.C. 1531 et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the special rules do not have significant takings implications. The

enforcement provision in the proposed special rules do not include any language requiring or authorizing forfeiture of personal property or any property rights. E.O. 12630 addresses concerns based on the Fifth Amendment dealing with private property taken for public use without compensation. The land covered by the special rules are public lands managed by the Bureau of Land Management; therefore no private property is affected. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, BLM finds that these special rules do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The special rules do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The special rules do not preempt state law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that these special rules do not unduly burden the judicial system, and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with Executive Order 13175, we find this final special rules does not include policies with tribal implications. The special rules would not affect lands held for the benefit of Indians, Aleuts, and Eskimos.

Paperwork Reduction Act

These special rules do not contain information collection requirements the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

These special rules were considered in the Lower Deschutes River Management Plan and Environmental Impact Statement, published in January 1993, which is on file and available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The special rules themselves should not have a significant effect on the human environment. They are principally rules of conduct intended to protect human health and safety, minimize environmental degradation, and ensure that use of the river and associated facilities are properly authorized.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make these special rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the special rules clearly stated?

(2) Do the special rules contain technical language or jargon that interferes with its clarity?

(3) Does the format of the special rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the special rules be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the special rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final rule? What else could we do to make the interim final special rules easier to understand?

If you have any comments on how we could make these special rules easier to understand, in addition to sending the original to the address shown in **ADDRESSES**, above, please send a copy to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: *Execsec@ios.doi.gov.*

The authority for these special rules is found in 43 U.S.C. 1733; 43 CFR 8351.2–1.

Special Rules for Lower Deschutes River Corridor

Under 43 CFR 8351.2–1, the Bureau of Land Management will enforce the following rules year round within the Lower Deschutes Wild and Scenic River corridor.

Section 1 Definitions

The following definitions will apply to the rules:

Approved portable toilet means any non-biodegradable, rigid, durable, container designed to receive and hold human waste, in any container position, without leaking, and equipped with a dumping system that allows the container to be emptied into a standard receiving or dump system designed for that purpose, such as a SCAT machine or recreational vehicle dump station, in a sanitary manner, without spills, seepage, or human exposure to human waste.

Boat means every watercraft or device used as a means of transport on the water.

Camping means erecting a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, trailer, or mooring a boat for apparent overnight occupancy.

Designated campsite means a BLM-designated campsite, marked with a visible number mounted on a post or placard.

Developed area is a site or area that contains structures or capital improvements primarily used by the public for recreational purposes. This may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; potable water, grills or fire rings; tables; or controlled access.

Developed toilet facility is a vault type toilet provided by the Bureau of Land Management or Oregon State Parks and Recreation Commission.

Display intent to remain overnight means any off-loading onto the riverbank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

Excessive noise is any noise which is unreasonable, considering the location, time of day, impact on river users, or other factors which govern the conduct of a reasonably prudent person under the circumstances.

Firearm means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and readily capable of use as a weapon.

Fireworks means any combustible or explosive composition or substance or any combination of any such composition or substances or any other article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges, or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, bombs, skyrockets, wheels, colored fires, fountains, mines, serpents, or any other article of like construction or any article containing any explosive or flammable compound or any tablets or other device containing any explosive substance or flammable compound.

Group means any number of persons affiliated together with a common goal to recreate with each other in activities

such as rafting, eating, camping, or swimming.

Group size limit means the maximum number of persons a group may have while together within the river corridor, regardless of the number of persons covered by each boating pass possessed by members of the group. This limit is intended to avoid resource damage and social conflicts caused by large groups concentrating in small areas.

Highway means every public way, road, street, thoroughfare and place, including bridges, viaducts, and other structures within the boundaries of this state, open used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

Motorboat means any boat propelled in whole or in part by machinery, including boats temporarily equipped with detachable motors.

Non-designated campsite means a campsite which has not been designated by BLM and is not marked with a visible number.

Obscene means objectionable or offensive to accepted standards of decency.

Refuse includes but is not limited to wastewater, sewage, litter, trash, garbage, scraps, remnants of water balloons or clay pigeons, or other useless, worthless parts of things.

Remain overnight means human presence in the Lower Deschutes River Corridor on a boat-in basis for any period of time from one hour after legal sunset to one hour before legal sunrise.

River corridor means those public lands located within the Final National Wild and Scenic River boundary as described in the Lower Deschutes River Management Plan and Environmental Impact Statement, Volume 1, January 1993.

Vessel means every watercraft or device used as a means of transport on the water except single inner tubes, air mattresses, and water toys.

Unoccupied means the absence of human presence between 10 p.m. and one hour before legal sunrise.

Section 2 Prohibited Acts

The following are prohibited:

a. Camping

1. Camping outside of a designated campsite in river segments 1, 2, or 3.

2. Camping for a total period of more than 14 nights during any 28 night period. The 28 night period will begin the first night the site is occupied. The 14 night limit may be reached either through a number of separate visits or through a period of continuous occupation. Once the 14 night limit is reached in any camping area, the person(s) must move a distance of not less than 50 linear miles to continue camping on public lands.

3. Camping in one campsite by non-motorized boat longer than 4 consecutive nights.

4. At the end of a four night camping stay as described in 1(f) above, failing to remove all camping equipment and personal property and not relocating your camp within ¼ mile of the same site for a period of at least 14 nights.

5. Camping in one campsite by motorized boat longer than 9 consecutive nights between May 15 and October 15.

6. Between May 15 and October 15, whenever motorized boaters vacate a campsite and it is unoccupied, failing to remove all camping and personal property from the area and not relocating within ¼ mile of the same site for a period of at least 14 days.

7. Camping on any river island.

8. Camping in any area posted as closed to camping.

9. Being present in any designated day use area between 10 p.m. and one hour before sunrise.

10. Possessing or leaving refuse, debris, or litter in an exposed, unsightly, or unsanitary condition.

11. Leaving camping equipment, personal property, site alterations, or refuse after departing any campsite or in any vacant campsite.

12. Failing to pay camping fees within 30 minutes of occupying a fee campsite.

13. Installing permanent camping facilities.

14. Failing to meet the minimum or exceeding the maximum number of persons and/or vehicles allowed for a campsite.

15. Paying for or placing camping equipment or other personal property in/at/near a campsite, which is not to be occupied by that same person, for the purpose of holding or reserving the campsite site for later occupation by another person(s).

16. Moving any table, stove, barrier, litter receptacle, or other campground equipment.

17. Digging or leveling the ground at any campsite.

18. Failing to contain all group and personal equipment with a campsite.

b. Fires

1. Between June 1 and October 15:

i. Building, igniting, maintaining, using, attending, or being within 20 feet of a campfire, charcoal fire, or any other type of open flame. Exception: You may use commercially manufactured metal camp stoves and shielded lanterns when fueled with bottled propane or liquid fuel and operated in a responsible manner.

ii. Smoking except in non-public buildings, closed vehicles, while in boats on the water, or while standing in the water.

2. Between October 16 and May 31:

i. Building, igniting, maintaining, using, attending, or being within 20 feet of a campfire unless it is contained in a metal fire pan or similar metal container with sides measuring at least 2″ in height and prevents ashes or burning material from spilling onto the ground and is elevated above the ground.

ii. Exception: BLM-provided metal campfire rings may be used in lieu of a fire pan.

3. Leaving a fire unattended or without completely extinguishing it.

4. Burning or attempting to burn, in any campsite, non-combustible items such as tin, aluminum, or glass.

5. Discarding lighted or smoldering material, or lighting, tending, or using a fire, stove or lantern in such a manner that threatens, causes damage to, or results in the burning of property or resources, or creates a public safety hazard.

6. Using or possessing fireworks.

7. Failing to observe any fire prevention order or regulation issued by the Bureau of Land Management.

8. Gathering or burning any living, dead, or down vegetation gathered within the river corridor.

c. Sanitation and Refuse

1. For members of overnight boating groups that remain, intend to remain, or display intent to remain overnight within the river corridor, failing to carry an approved portable toilet. Except: This requirement shall not apply to overnight kayak trips that are entirely self-contained (not supported by a gear boat) or overnight hikers or bikers.

2. When boating within the river corridor on an overnight basis, failing to use either an approved portable toilet or developed toilet facility for all solid human waste. Exception: This requirement shall not apply to overnight kayak trips that are entirely self-contained, or overnight hikers or bikers.

3. For all persons who remain, intend to remain, or display intent to remain overnight, failing to set up an approved portable toilet, ready for use, as soon as practical upon landing at the campsite to be occupied.

4. Leaving, depositing, or scattering human waste, toilet paper, or items used as toilet paper anywhere except in an approved portable toilet or developed toilet facility.

5. Where a developed toilet facility is not provided and an approved portable toilet is not required, and the situation

makes it impractical to use an approved portable toilet, failing to bury all human waste and toilet paper, or material used as toilet paper, at least six inches below the surface of the ground in natural soil, and at least fifty feet from the edge of the river or any other water source.

6. Burying or abandoning or burning refuse.

7. Failing to use developed toilet facilities provided at public recreation sites.

8. Emptying an approved portable toilet into a developed toilet facility, or any other facility not developed and identified especially for that purpose.

9. Disposing of refuse in other than refuse receptacles provided for that purpose.

10. Depositing non-biodegradable refuse in the vault of a developed toilet facility.

11. Depositing household, landscaping, commercial, or industrial refuse brought in as such from non-government property into government-provided refuse receptacles.

12. Allowing any refuse to drain from any vehicle or structure constructed for movement on highways—except through a sealed connection, and into a suitable container, which prevents human contact with the contents.

13. Washing dishes or using soap in the River or any of its tributaries.

d. Firearms/Weapons

1. Discharging a firearm from the 3rd Saturday in May through August 31, except during authorized hunting seasons, or at any time within a developed area.

2. Discharging a firearm at any time within 150 yards of a residence, building, developed recreation site, or occupied area.

3. Discharging a firearm at any time into or from any area posted ''no shooting'' or ''safety zone''.

4. Carrying, possessing, or discharging a firearm or other weapon in violation of Oregon State law.

e. Disorderly Conduct

1. With the intent to cause public alarm, nuisance, jeopardy, or violence, or knowingly or recklessly committing a risk thereof, committing any of the following acts:

i. Engaging in fighting, threatening, or violent behavior, or

ii. Using language, an utterance or gesture, or engaging in a display or act that is lewd or obscene, physically threatening, or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace, or

iii. Making excessive noise, or

iv. Creating or maintaining a hazardous or physically offensive condition that causes personal or public alarm, nuisance, jeopardy or violence by possessing, using, or operating any water projectile device, including but not limited to hydro sticks, or water balloons/water balloon launchers, spud guns, air rifles, or

v. Using motorized/mechanized water cannons.

vi. Creating excessive noise by voice, generators, amplified music, or any other means from 10 p.m. to 7 a.m.

vii. Rolling any stone or other object that endangers or threatens the public, property, or wildlife.

f. Vehicles

1. Parking a vehicle in such a manner as to impede or obstruct the normal flow of traffic, or create a hazardous condition.

2. Failing to obey posted parking closures or restrictions.

3. Exceeding posted speed limits.

4. Traveling or parking off of designated roads, parking areas or launch sites.

5. Operating any motor vehicle in violation of any Oregon State law or regulation.

6. Operating any motor vehicle without a valid state driver's license and current vehicle registration.

7. Operating a vehicle with a seating capacity greater than 24 passengers (each seat to hold no more than 2 persons) and 1 driver and/or a total vehicle length greater than 28 feet.

8. Riding or allowing anyone to ride in or on top of a boat being carried by a motor vehicle. Exceptions: (1) A person(s) may ride within a single boat that is secured to the bed of a pickup truck by ropes or straps and the boat is contained within the pickup siderails; (2) A person(s) may also ride within a single boat which is likewise secured to the bed of a flatbed motor vehicle.

9. Operating any vehicle or combination of vehicles or load thereon which is wider than 8 feet 6 inches except as under a variance permit or other exemption as authorized by state law.

10. Riding or allowing anyone to ride on the exterior part of a motor vehicle.

11. Operating a vehicle or combination of vehicles when the overall height, including the load, is greater than 14 feet.

12. Operating a vehicle with a load which is unsecured, unsafe, or otherwise presents a hazard to the public.

g. Other Acts

1. Defacing, disturbing, removing, or destroying any personal property, or structures, or any scientific, cultural, archeological, or historic resource, or natural object or thing.

2. Defacing, removing, or destroying plants or their parts, soil, rocks or minerals.

3. Abandoning property.

4. Leaving property unattended for longer than 24 hours.

5. Destroying, injuring, defacing, or damaging U.S. Government property.

6. Failing to exhibit required permits or identification when requested by a BLM authorized officer or representative.

7. Selling, offering for sale, or promoting any services or merchandise or conducting any kind of business enterprise on public land or waters without a BLM permit.

8. Failing to possess a BLM Special Recreation Permit for commercial use as defined in 43 CFR 8372.0–5.

9. Failing to restrain an animal on a leash not longer than 6 feet and secured to a fixed object or a person, or otherwise physically restricted at all times except when hunting.

10. Allowing a pet to make unreasonable noise considering location, time of day or night, impact on public land users, and other relevant factors or that frightens wildlife by barking, howling, or making other noise.

11. Failing to remove pet waste.

12. Leaving an animal unattended in an unsafe location or situation.

13. Operating an aircraft in violation of FAA rules and regulations.

14. Landing an aircraft without authorization when required.

15. Taking, attempting to take, or possessing any fish or wildlife in violation of any Oregon State law or regulation.

16. Participating in an unauthorized event or activity.

17. Allowing livestock to graze in any area or at any time when grazing is prohibited.

18. Violation by commercial permittee of any stipulations outlined in the *Guidelines for Commercial Use of Rivers in the Prinveville District.*

19. Allowing a group to exceed the group size limit of 16 people in river segments 1, 3, and 4, and 24 people in segment 2.

h. Boating

1. Failing to possess a Deschutes River boater's pass as required by Oregon State Parks and Recreation Commission.

2. Operating any motor-driven boat in any area posted or designated as closed to such use.

3. Operating any boat or vessel in such manner as to create a hazardous or unsafe condition.

4. Operating any personal watercraft, including but not limited to jet skis, wet bikes, wave runners, and wet jets from Heritage Landing boat ramp upstream.

5. Including the operator, on board operating a motor-driven boat with more than seven people.

6. Making more than two round trips per day in a motor-driven boat.

7. While operating a boat, stopping along or tying up to the riverbank, except in an emergency, within the Rattlesnake-Moody Rapids pass through zone. This zone extends from the upstream end of Rattlesnake Rapids at about river mile 2.5 to the no wake zone at the downstream end of Moody Rapids at about river mile .5.

8. Swimming or floating with or without a floatation device and/or using inner tubes, float tubes, boogie boards, surf boards, and other similar water toys used for the transport of persons or property in the Deschutes River channel in Moody Rapids on those days when power boats are allowed, except as provided below. This prohibition is in effect from the upstream end of Moody Rapids down river to the downstream side of Moody Rapids channel marker from legal sunrise to legal sunset when power boats are allowed by the Oregon State Marine Board. Anglers using float tubes may cross the Moody Rapids channel during these times provided they do so in the most direct route possible. Float tube anglers crossing the Moody Rapids channel shall look out for and give right-of-way to any motorized boat, which is in Moody Rapids channel or about to enter the rapids from downstream or upstream, or in any event when motorboats are approaching, close enough to create a hazard.

9. Exceeding Oregon State noise standards for motorboats.

10. Violating any Oregon State Marine Board Regulation.

11. Failing to complete boater registration when requested to do so by agency personnel.

12. Launching or taking out watercraft in an area designated as closed to this activity.

13. Securing any person(s), inner tube, float tube, boogie board, surf board, or other similar water toys used for transport of persons or property, or in or on the waters of the Deschutes River, to the river bank or to any tree, fixed object, or anchoring device on lands adjacent to the river bank or to any such object or device within the boundaries of the river and river banks of the Deschutes River by any cable, rope, line, bungee cord, or other means except to secure boats to the river bank as a normal and recognized necessity. No person shall hold on to any such line or to any device secured to such line in order to ride or be transported into any channel of the Deschutes River.

14. Securing any cable, rope, line, or bungee cord or any device across the river except as necessary for rescue and/or salvage operations and other necessary uses upon consent of the managing agencies of the Confederated Tribes of the Warm Springs, Oregon Parks and Recreation Department, Bureau of Land Management, and Oregon State Police. Exception: the cables presently in place across the Deschutes River at Dant, the upstream area (approximately river mile 52) of the City of Maupin, and the flow station cable car crossing upstream from Deschutes State Park are exempt from these special rules.

i. Alcoholic Beverages and Controlled Substances

1. Violating any Prohibitions Relating to Liquor as found in the Oregon Criminal Code, Title 37, Chapter 471.

2. Committing any Open Container Violation as found in the Oregon Vehicle Code 811.170.

3. No person under the influence of intoxicating liquor or controlled substance shall operate, propel, or be in actual physical control of a boat upon the water. Not less than .08 percent by weight of alcohol in a person's blood constitutes being under the influence of intoxicating liquor.

4. No owner of a boat or person in charge or in control of a boat shall authorize or knowingly permit a boat to be propelled or operated upon the water by any person who is under the influence of intoxicating liquor or a controlled substance.

5. Operating or being in actual physical control of a motor vehicle is prohibited while the operator:

i. Is under the influence of alcohol, or a drug, or drugs, or inhalant, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

ii. Has .08 percent or more by weight of alcohol in the blood of the operator.

6. The provisions in paragraph (e) above also apply to an operator who is or has been legally entitled to use alcohol or another drug.

7. Cultivating, manufacturing, delivering, or trafficking a controlled substance, as defined in 21 U.S.C. 802(6) and 812 and 21 CFR 1308.11–1308.15, except when distribution is made by a licensed practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists and agency relationship; or

8. Possessing a controlled substance, as defined in 21 U.S.C. 802(6) and 812 and 21 CFR 1308.11–1308.15, unless such substance was obtained, either directly or pursuant to a valid prescription of order of as otherwise allowed by Federal or State law, by the possessor from a licensed practitioner acting in the course of professional practice.

j. Interfering With Agency Functions

1. Threatening, resisting, intimidating, or intentionally interfering with a government employee volunteer, or agent engaged in an official duty, or on account of the performance on an official duty.

2. Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, wildlife management operations involving animals which pose a threat to public safety, law enforcement actions, and emergency operations that involve a threat to public safety or public land resources, or other activities where the control of public movement and activities is necessary to maintain order and public safety.

3. Knowingly giving a false or fictitious report or other false information:

i. To an authorized person investigating an accident or violation of law or regulation, or

ii. On application for a permit.

4. Knowingly giving a false report for the purposes of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the United States to a fictitious event.

Section 3 Penalties

On public lands, under 43 CFR 8351.2–1, any person who violates any of these special rules may be tried before a United States Magistrate and fined up to $500 or imprisoned for up to 6 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Elaine M. Brong,

State Director, Oregon State Office, Bureau of Land Management.

[FR Doc. 03–17388 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–77027; 3–08808]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has received a request from the United States Fish and Wildlife Service to withdraw 640 acres of public land from surface entry and mining to protect and manage breeding ground for migratory birds and other wildlife values. Administrative jurisdiction of the land would be transferred to the Fish and Wildlife Service for inclusion in the Ruby Lake National Wildlife Refuge. This notice segregates the land from surface entry and mining for up to 2 years while various studies and analyses are made to support a final decision on the withdrawal application.

DATES: Comments and requests for a meeting should be received on or before October 7, 2003.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., PO Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 775–861–6532.

SUPPLEMENTARY INFORMATION: The United States Fish and Wildlife Service has filed an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights:

Mount Diablo Meridian

T 25 N., R. 57 E.,
Sec. 11, SE¼NW¼ and N½SE¼;
Sec. 12, W½NE¼, NW¼, E½SW¼, NW¼SW¼, and W½SE¼;
Sec. 13, NW¼NE¼ and NE¼NW¼.

The area described contains 640 acres in White Pine County.

The land proposed for withdrawal is an isolated tract of public land within the boundary of the Ruby Lake National Wildlife Refuge. The land would be withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws, to protect and manage breeding ground for migratory birds and other wildlife values. Administrative jurisdiction would be transferred to the Fish and Wildlife Service for inclusion in the Refuge.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

Comments, including names and street addresses of commenters, will be available for public review at the Ely Field Office, 702 North Industrial Way, Ely, Nevada, during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, will be made available for public inspection in their entirety.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from July 9, 2003, in accordance with 43 CFR 2310.2(a), the land will be segregated from surface entry and mining, unless the application is denied or canceled, or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

Dated: July 1, 2003.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 03–17392 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chalmette Battlefield Task Force Committee Meeting

AGENCY: National Park Service, Jean Lafitte National Historical Park and Preserve, Interior.

ACTION: Notice of Task Force Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.1, section 10(a)(2), that a meeting of the Chalmette Battlefield Task Force Committee will be held at 4 p.m. at the following location and date:

DATES: Wednesday, July 30, 2003.

ADDRESSES: Chalmette Battlefield, 8606 West St. Bernard Highway, LA 70042.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 419 Decatur Street, New Orleans, LA 70130, (504) 589–3882, extension 137 or 108.

SUPPLEMENTARY INFORMATION: The purpose of the Chalmette Battlefield Task Force Committee is to advise the Secretary of the Interior on suggested improvements at the Chalmette Battlefield site within Jean Lafitte National Historical Park and Preserve.

The members of the Task Force are as follows: Ms. Elizabeth McDougall, Ms. Faith Moran, Mr. Anthony A. Fernandez, Jr., Mr. Drew Heaphy, Mr. Alvin W. Guillot, Mrs. George W. Davis, Mr. Eric Cager, Mr. Paul V. Perez, Captain, Ms. Bonnie Pepper Cook, Mr. Michael L. Fraering, Colonel John F. Pugh, Jr., and Ms. Geraldine Smith.

The proposed meeting agenda for July 30, 2003 includes: (1) An on-site inspection of park resources by Task Force members, park staff, and NPS technical personnel from the Southeast Regional Office, (2) discussion of potential future resource protection and visitor experience goals, and (3) coordination and scheduling of future meetings. Any member of the public may file with the committee a written statement concerning the matters to be discussed. Written statements may also be submitted to the superintendent at the address above. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Minutes of the meeting will be available for public inspection at park headquarters, 419 Decatur Street, New Orleans, Louisiana and on the park Website at *http://www.nps.gov/jela.htm* approximately 4 weeks after the meeting.

Dated: June 9, 2003.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 03–17266 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Landmarks Committee of the National Park System Advisory Board; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the National Park System Advisory Board will be held at 9 a.m. on the following dates and at the following location.

DATE: September 10–September 11, 2003

LOCATION: The Ann Pamela Cunningham Building, Mount Vernon, Mount Vernon, Virginia 22121

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Historic Landmarks Survey, National Register, History, and Education, National Park Service, 1849 C Street, NW., MS 2280; Washington, DC 20240. Telephone (202) 354–2216.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Landmarks Committee of the National Park System Advisory Board is to evaluate nominations of historic properties in order to advise the full National Park System Advisory Board of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the National Park System Advisory Board those properties that the Landmarks Committee finds meet the criteria for designation as National Historic Landmarks. The members of the National Landmarks Committee are:

Dr. Janet Snyder Matthews, CHAIR
Dr. Allyson Brooks
Dr. Ian W. Brown
Mr. S. Allen Chambers, Jr.
Dr. Elizabeth Clark-Lewis
Dr. Bernard L. Herman
Professor E.L. Roy Hunt
Ms. Paula J. Johnson
Mr. Jerry L. Rogers
Dr. Richard Guy Wilson

The meeting will include presentations and discussions on the national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file for consideration by the committee written comments concerning nominations and matters to be discussed pursuant to 36 CFR Part 65.

Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Register, History, and Education (2280); National Park Service; 1849 C Street, NW., MS 2280; Washington, DC 20240.

The committee will consider the following nominations:

Alabama
  Foster Auditorium, Sixth Avenue, Tuscaloosa
  Kenworthy Hall, N Side Greensboro Hwy. (AL 14), 2.0 miles W of courthouse square, Marion, Perry County
Arizona
  Navajo Nation Council Chamber, W008–013 Circle Boulevard, Window Rock, Apache County
  Sage Memorial Hospital School of Nursing, Intersection Highways 264 and 191, Ganado, Apache County
California
  Swedenborgian Church, 3200 Washington Street, San Francisco
Colorado
  United States Air Force Academy, Cadet Area, Roughly between Cadet Drive and Faculty Drive, El Paso County
Illinois
  Isidore Heller House, 5132 Woodlawn Avenue, Chicago, Cook County
Louisiana
  Rosedown Plantation, U.S. Hwy. 61 and LA Hwy. 10, St. Francisville, West Feliciana County
Mississippi
  Eudora Welty House, 1119 Pinehurst Street, Jackson, Hinds County
New York
  Camp Pine Knot, Raquette Lake, Town of Long Lake, Hamilton County
  Eagle Island Camp, Eagle Island, Upper Saranac Lake, Town of Santa Clara, Franklin County
Oklahoma
  Honey Springs Battlefield, 1863 Honey Springs Battlefield Road, Checotah, McIntosh/Muskogee County
Wisconsin
  First Unitarian Society Meeting House, 900 University Bay Drive, Village of Shorewood Hills, Dane County

The Committee will also consider the following boundary adjustments, additional documentation and withdrawals of designation:

California
  First Pacific Coast Salmon Cannery Site (withdrawal), On the Sacramento River opposite the foot of K St., Broderick, Yolo County

Dated: June 20, 2003.

Carol D. Shull,

Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Park Service, Washington, DC.

[FR Doc. 03–17265 Filed 7–8–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 14, 2003.

Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 24, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

DISTRICT OF COLUMBIA

District of Columbia

Grummell, Alexander, School, (Public School Buildings of Washington, DC MPS) Kendall and Gallaudet Sts, NE., Washington, 03000671
Massachusetts Avenue Parking Shops, 4841–4861 Massachusetts Ave. NW., Washington, 03000670
Military Road School, (Public School Buildings of Washington, DC MPS) 1375 Missouri Ave., NW., Washington, 03000674
Syphax, William, School, (Public School Buildings of Washington, DC MPS) 1360 Half St., SW., Washington, 03000672
Western High School, (Public School Buildings of Washington, DC MPS) 35th and R Sts., NW., Washington, 03000673

GEORGIA

Camden County

Greyfield, (Cumberland Island National Seashore MRA) Cumberland Island, Camden, 03000675

Early County

Bank of Jakin, 135 S. Pearl St., Jakin, 03000678

Fulton County

Howell Interlocking Historic District, Roughly centered on Howell Interlocking at Marietta, W. Marietta Sts., Howell Mill Rd. and Lowery Blvd., Atlanta, 03000676

Thomas County

East End Historic District (Boundary Increase and Decrease), Roughly bounded by Metcalf Ave., Simeon St., Grady St., and East Loomis St., Thomasville, 03000677

Worth County

Poulan Library, S side of 100 blk. of Church St., Poulan, 03000679

LOUISIANA

St. James Parish

Chauvin House, (Louisiana's French Creole Architecture MPS) 10138 LA 44, Convent, 03000681

West Feliciana Parish

Star Hill Plantation Dependency, 5018 U.S. 61, Star Hill, 03000680

MASSACHUSETTS

Middlesex County

Flint House, 28 Lexington Rd., Lincoln, 03000684

Robbins, John, House, 144 Great Rd., Acton, 03000682

Worcester County

North Avenue Rural Historic District, 85–147 North Ave., 6–8 Trask Rd., 4–16 Hopedale St., Mendon, 03000683

Spencer Town Center Historic District (Boundary Increase), 10–29 Grove, 1–51 High, 9–85 Mechanic,13–72 Pleasant, 5–62 Wall Sts., and parts of Prouty, Lincoln, Cherry and Jones St., Spencer, 03000685

MICHIGAN

Kent County

American Seating Company Factory Complex, 801 Broadway Ave. NW., Grand Rapids, 03000687

MISSISSIPPI

Attala County

Storer House, 300 N. Huntington St., Kosciusko, 03000688

Panola County

Batesville Historic District, Roughly along Panola Ave., Boothe, Court, Church, Central, Kyle, Baker and Lester Sts., Batesville, 03000686

MONTANA

Lewis and Clark County

Benton Avenue Cemetery, 1800 N. Benton Ave., Helena, 03000689

NEW MEXICO

Santa Fe County

Schmidt, Albert, House and Studio, 1505 A and B Bishop's Lodge Rd., Tesuque, 03000691

NEW YORK

Ontario County

Barden, Levi, Cobblestone Farmhouse, (Cobblestone Architecture of New York State MPS) 5300 Wabash Rd., Seneca, 03000690

OREGON

Benton County

Corvallis High School, 836 NW 11th St., Corvallis, 03000692

Washington County

Waggener, JS and Melinda, Farmstead, 34680 SE Firdale Rd., Cornelius, 03000693

SOUTH CAROLINA

Spartanburg County

Bush House, 3960 New Cut Rd., Inman, 03000695

TENNESSEE

Anderson County

Briceville Community Church and Cemetery, TN 116, Briceville, 03000697

Sevier County

New Salem Baptist Church, (Rural African-American Churches in Tennessee MPS) 601 Eastgate Rd., Sevierville, 03000696

WISCONSIN

Dane County

East End Historic District, 7002–7016 Hubbard Ave., 1812–1916 Park St. (even only) 7002–7227, 7233, 7235, 7237 Elmwood Ave., Middleton, 03000699

Eau Claire County

Carson Park Baseball Stadium, Carson Park Dr., Carson Park, Eau Claire, 03000698

[FR Doc. 03–17267 Filed 7–8–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, that meet the definitions of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 44 cultural items are 9 anthropomorphic kachina figures, 1 anthropomorphic figure in a cradle and 1 companion anthropomorphic figure, 1 stone anthropomorphic figure with turquoise eyes and shell mouth, 3 stone figures, 1 wooden arrow shaft approximately 8 inches long and wrapped with string and plant material, 3 wooden arrow shafts, 2 medicine wands, 5 hair ties with eagle and migratory bird feathers, 1 prayer stick with turkey feathers, 3 dance rattles, 5 headpieces or tablitas, 1 altar piece, 1 red-shafted flicker feather, 2 flint tools, 1 woven cotton sash, 2 woven shawls or mantas with embroidery, and 2 silver pins used with mantas.

During 1999 and 2000, the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, participated in an undercover investigation of several individuals believed to be engaged in the illegal trafficking of Native American cultural items. Federal agents purchased or seized several cultural items as part of the investigation. On September 10, 2002, Joshua Baer and Thomas Cavaliere each pled guilty to three counts of illegal trafficking of Native American cultural items obtained in violation of 18 U.S.C. 1170 (b). On January 3 and February 12, 2003, the U.S. District Court for the District of New Mexico ordered that all items seized during the investigation be forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, and repatriated to the culturally affiliated Indian tribes. The 44 cultural items are part of the items forfeited to the U.S. Fish and Wildlife Service.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, prepared a summary of the cultural items obtained during the investigation. The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also consulted with representatives of

the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of the Pueblo of Jemez, New Mexico identified the 44 cultural items as ceremonial objects needed for the practice of traditional religion. They identified the anthropomorphic kachina figures as being kept in individuals' homes as spiritual guardians. They identified the tablitas and hair ties as being worn in particular religious ceremonies. They identified one of the flint tools as having been stolen from the Flint Society House during a break-in. The representatives of the Pueblo of Jemez, New Mexico identified all 44 cultural items as the communal property of the pueblo as a whole that could not be sold or given away by an individual.

Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 44 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religion by their present-day adherents. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the 44 cultural items also have ongoing historical, traditional, or cultural importance central to a Native American group or culture itself, rather than property owned by an individual. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the 44 sacred objects/objects of cultural patrimony and the Pueblo of Jemez, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Special Agent Lucinda D. Schroeder, U.S. Fish and Wildlife Service, 4901 Paseo Del Norte, Albuquerque, NM 87113, telephone (505) 828-3064, before August 8, 2003. Repatriation of the sacred objects/objects of cultural patrimony to the Pueblo of Jemez, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: June 11, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–17269 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, that meet the definitions of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 45 cultural items are 1 cougar foot; 1 small eagle feather; 2 bundles of eagle feathers wrapped in cotton calico and kept in a leather pouch; 7 hair ties with eagle feathers; 1 gourd rattle; 8 wooden talking prayer sticks with eagle feathers; 4 miniature bows with feathers; 4 carved wooden snakes; 2 stone talking sticks wrapped in colored yarn; 1 deerskin bag containing several bags of herbs and a memory aid; 1 deerskin bag containing several bags of herbs, stones, a bandolier adorned with eagle and hawk talons and toes from mammals, and reeds and sticks adorned with migratory bird feathers; 1 leather bag containing 2 talking prayer sticks with eagle and turkey feathers, and 5 hair ties with eagle feathers; 1 bag containing stones, bags of herbs, and beads; 1 medicine bundle containing herbs; 1 bundle of rattles and talking prayer sticks; 2 stone axes or chamajillas; and 7 bull-roarers.

During 1999 and 2000, the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, participated in an undercover investigation of several individuals believed to be engaged in the illegal trafficking of Native American cultural items. Federal agents purchased or seized several cultural items as part of the investigation. On September 10, 2002, Joshua Baer and Thomas Cavaliere each pled guilty to three counts of illegal trafficking of Native American cultural items obtained in violation of 18 U.S.C. 1170 (b). On January 3 and February 12, 2003, the U.S. District Court for the District of New Mexico ordered that all items seized during the investigation be forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, and repatriated to the culturally affiliated Indian tribes. The 45 cultural items are part of the items forfeited to the U.S. Fish and Wildlife Service.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, prepared a summary of the cultural items obtained during the investigation. The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also consulted with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of the Navajo Nation, Arizona, New Mexico & Utah identified all 45 cultural items as ceremonial objects needed for the practice of traditional Navajo religion by present-day adherents. They identified the seven bull-roarers as needed for practice of the Holy Way ceremony. They identified the two chamajillas as ≥monster slayer's clubs≥ that are part of a medicine man's bundle. They identified the hair ties as being worn during particular religious ceremonies such as the Holy Way. They identified the two bundles of eagle feathers as needed for the practice of the Holy Way ceremony. They identified the four

miniature bows with feathers as needed for the practice of the Holy Way ceremony. The representatives of the Navajo Nation, Arizona, New Mexico & Utah identified all 45 cultural items as the communal property of the tribe as a whole that could not be sold or given away by an individual.

Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 45 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the 45 cultural items also have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the 45 sacred objects/objects of cultural patrimony and the Navajo Nation, Arizona, New Mexico & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Special Agent Lucinda D. Schroeder, U.S. Fish and Wildlife Service, 4901 Paseo Del Norte, Albuquerque, NM 87113, telephone (505) 828-3064, before August 8, 2003. Repatriation of the sacred objects/objects of cultural patrimony to the Navajo Nation, Arizona, New Mexico & Utah may proceed after that date if no additional claimants come forward.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: June 11, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–17271 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from an unknown site near ''New Dungeness,'' WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Jamestown S'Klallam Tribe of Washington; Lower Elwah Tribal Community of the Lower Elwah Reservation, Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; and Skokomish Indian Tribe of the Skokomish Reservation, Washington.

Around 1880, human remains representing at least one individual were removed from an unknown site ''Near New Dungeness [WA], North Pacific Coast,'' according to catalog records, by an unknown individual. The human remains were labeled ''Clallam.'' In 1903, the human remains were donated to the Phoebe A. Hearst Museum by John W. Stillman, through the University of California Museum of Paleontology. No known individual was identified. No associated funerary objects are present.

Based on museum records, the human remains are identified as being Native American. The degree of preservation, based on appearance, indicates that the human remains date to the last several hundred years. Based on geographical location, the human remains are determined to be culturally affiliated with the Jamestown S'Klallam Tribe of Washington; Lower Elwah Tribal Community of the Lower Elwah Reservation, Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; and Skokomish Indian Tribe of the Skokomish Reservation, Washington.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Jamestown S'Klallam Tribe of Washington; Lower Elwah Tribal Community of the Lower Elwah Reservation, Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; and Skokomish Indian Tribe of the Skokomish Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642-6096, before August 8, 2003. Repatriation of the human remains to the Jamestown S'Klallam Tribe of Washington; Lower Elwah Tribal Community of the Lower Elwah Reservation, Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; and Skokomish Indian Tribe of the Skokomish Reservation, Washington may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Jamestown S'Klallam Tribe of Washington; Lower Elwah Tribal Community of the Lower Elwah Reservation, Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; and Skokomish Indian Tribe of the

Skokomish Reservation, Washington that this notice has been published.

Dated: June 11, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–17270 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from sites WA-Klickitat-NL-3, WA-Klickitat-NL-4, and WA-Klickitat-NL-5, all located 1 mile north of Spedis, Klickitat County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington.

In 1924, human remains representing at least two individuals were removed from a cave at site WA-Klickitat-NL-3, 1 mile north of Spedis, WA, by W.D. Strong and W.E. Schenck. The human remains were donated to the Phoebe A. Hearst Museum of Anthropology in the same year by H.J. Biddle. No known individuals were identified. The nine associated funerary objects are eight textile fragments and one nonhuman bone awl.

In 1924, human remains representing at least five individuals were removed from a cave at site WA-Klickitat-NL-4, 1 mile north of Spedis, WA, by W.D. Stong and W.E. Schenck. The human remains were donated to the Phoebe A. Hearst Museum of Anthropology in the same year by H.J. Biddle. No known individuals were identified. No associated funerary objects are present.

In 1924, human remains representing at least two individuals were removed from a cave at site WA-Klickitat-NL-5, 1 mile north of Spedis, WA, by W.D. Stong and W.E. Schenck. The human remains were donated to the Phoebe A. Hearst Museum of Anthropology in the same year by H.J. Biddle. No known individuals were identified. No associated funerary objects are present.

The circumstances of burial, including interment in a cave and burial characteristics, identify the human remains as Native American. The presence of associated funerary objects of European origin dates two of the burials to a post-European contact time period. The Indian Claims Commission has determined that the geographical location of the burials was included in the aboriginal territory of the Confederated Tribes and Bands of the Yakama Nation, Washington at the time of European contact.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least nine individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the nine objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642-6096, before August 8, 2003. Repatriation of the human remains and associated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, Washington may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington that this notice has been published.

Dated: June 11, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–17272 Filed 7–8–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from a site in Churchill County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Cedarville Rancheria, California; Confederated Tribes of the Warm Springs Reservation of Oregon; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Bidwell Indian Community of the Fort

Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute Indian Tribe of Utah; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.

In 1952, human remains representing at least one individual were removed by excavation from site NV-Ch-86, Churchill County, NV, by Gordon L. Grosscup, who donated them to the Phoebe A. Hearst Museum of Anthropology in the same year. No known individual was identified. The 90 associated funerary objects are 14 leather bridle fragments, 75 trade beads and cloth fragments, and one corroded metal bell.

The circumstances of burial identify the human remains as Native American. The presence of associated funerary objects of Euroamerican origin date the burial to a post-European contact time period. Historical records and consultation evidence indicate that the geographical area that includes site NV-Ch-86 was inhabited by Paiute culture groups at the time of European contact. The current descendants of these groups are the Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Cedarville Rancheria, California; Confederated Tribes of the Warm Springs Reservation of Oregon; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute Indian Tribe of Utah; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 90 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Cedarville Rancheria, California; Confederated Tribes of the Warm Springs Reservation of Oregon; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute Indian Tribe of Utah; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642-6096, before August 8, 2003. Repatriation of the human remains and associated funerary objects to the Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Cedarville Rancheria, California; Confederated Tribes of the Warm Springs Reservation of Oregon; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute Indian Tribe of Utah; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada may proceed

after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Cedarville Rancheria, California; Confederated Tribes of the Warm Springs Reservation of Oregon; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute Indian Tribe of Utah; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada that this notice has been published.

Dated: June 11, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–17273 Filed 7–8–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Metropolitan Park District of the Toledo Area, Toledo, OH; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Metropolitan Park District of the Toledo Area, Toledo, OH. The human remains and associated funerary objects were removed from Audubon Islands State Nature Preserve, Lucas County, OH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGRPA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice revises the determination of cultural affiliation in the original notice to include two additional Indian tribes.

In the Federal Register of July 11, 2002, FR Doc. 02-17416, pages 45997-45998, paragraph 9, the last sentence is corrected by substituting the following sentence:

Lastly, officials of the Metropolitan Park District of the Toledo Area have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; and Ottawa Tribe of Oklahoma.

Paragraph 10 is corrected by substituting the following two paragraphs:

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Gary Horn, Associate Director, Metropolitan Park District of the Toledo Area, 5100 West Central Avenue, Toledo, OH 43615-2100, telephone (419) 535-3050, before August 8, 2003. Repatriation of the human remains and associated funerary objects to the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; and Ottawa Tribe of Oklahoma may proceed after that date if no additional claimants come forward.

The Metropolitan Park District of the Toledo Area is responsible for notifying the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Band of Odawa Indians, Michigan; Ottawa Tribe of Oklahoma; American Indian Intertribal Association (a nonfederally recognized Indian group); and Walpole Island First Nation (a nonfederally recognized Indian group) that this notice has been published.

Dated: June 17, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–17268 Filed 7–8–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF JUSTICE

Notice of Lodging of Order and Stipulation Among Certain Debtors, United States of America, Pennsylvania, Ohio, Indiana, City of Chicago and Travelers Indemnity Company and Travelers Casualty and Surety Company With Respect to Environmental Claims Under the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Air Act, the Clean Water Act and Other Authorities

Notice is hereby given that, on July 1, 2003, a proposed Order and Stipulation among certain debtors, United States of America, Pennsylvania, Ohio, Indiana, City of Chicago and Travelers Indemnity Company and Travelers Casualty and Surety Company with Respect to Environmental Claims (the Order and Stipulation) in *In re:* LTV Steel, Inc. (LTV Steel Bankruptcy), Case No. 00–43866 (Bankr. N.D. Ohio), was lodged with the United States Bankruptcy Court for the Northern District of Ohio.

The United States, the Commonwealth of Pennsylvania, the States of Indiana and Ohio and the City of Chicago (collectively, the Governments) jointly asserted claims against LTV Steel under federal and state environmental laws, including claims by the United States in connection with the J&L Landfill in Rochester Hills, Michigan, the Abbey Street/Hickory Woods Subdivision Site in Buffalo, New York; the Grant Calumet River/Indiana Harbor Canal Riparian Site; and the Breslube-Penn Site in Moon Township, Pennsylvania. Pursuant to the Order and Stipulation, LTV Steel will seek approval from the Bankruptcy Court of its entry into a settlement pursuant to which the Governments will receive $14,146,253 from LTV Steel, plus all insurance proceeds, including an additional $15.4 million from one group of insurers and the assignments of certain proceeds to which the Debtors would be entitled as a result of settlement discussions with/

and or coverage litigation against other insurance carriers.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Order and Stipulation. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Post Office Box 7611, United States Department of Justice, Washington, DC 20044–7611, and should refer to the LTV Steel Bankruptcy, D.J. Ref. Numbers 90–11–3–160/1 & 90–11–3–160/2.

The Order and Stipulation may be examined at the Office of the United States Attorney, Northern District of Ohio, United States Courthouse, 801 West Superior Avenue—Suite 400, Cleveland, Ohio 44113, and at the office of the United States Environmental Protection Agency in Region II, 290 Broadway, New York, New York 10007 (call George Shanahan at 212–637–3171 to arrange to examine the Order and Stipulation); Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 (call Harry Steinmetz at 215–814–3161 to arrange to examine the Order and Stipulation); and Region V, Records Center, 7th Floor, 77 W. Jackson Blvd., Chicago, Illinois 60604 (M–F, between 8 a.m.–4 p.m. CST). During the public comment period, the Order and Stipulation may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Order and Stipulation may also be obtained by mail from the Consent Decree Library, Post Office Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. 202–514–0097, phone confirmation number 202–514–1547. In requesting a copy from the Consent Decree Library, please enclose a check payable to the United States Treasury in the amount of either $37.75 (25 cents per page reproduction cost) for the Order and Stipulation and all Exhibits or $10.25 for the Order and Stipulation only.

Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 03–17263 Filed 7–8–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a currently approved collection, Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, volume 68, Number 74, page 19010 on April 17, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5320.20. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. Abstract: The form is used to request permission to move certain NFA firearms in interstate or foreign commerce.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 800 respondents, who will complete the form within approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 400 annual total burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 2, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–17328 Filed 7–8–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a Currently Approved Collection; Annual Firearms Manufacturing and Exportation Report under 18 U.S.C. Chapter 44, Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 74, page 19010 on April 17, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 8, 2003. This process is conducted in accordance with 5 CFR 1320.10

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.11. Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government, State, Local, or Tribal Government. AFT collects this data for the purpose of law enforcement, fitness qualification, congressional inquiries, disclosure to the public in compliance with a court order, furnishing information to other Federal agencies, compliance inspections, and insuring that the requirements of the National Firearms Act are met.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete a 45 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,125 annual total burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 2, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–17329 Filed 7–8–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a currently approved collection; Renewal of Explosives License or Permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection requested to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Action of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**,Volume 68, Number 75, page 19227 on April 18, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Renewal of Exlosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.14/5400.15, Part III. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government, State, Local, or Tribal Government. Abstract: The information collection activity is used for the renewal of explosives licenses or permits. This short renewal form is used in lieu of a more detailed application.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 2,500 respondents, who will complete the form within approximately 20 minutes.

Dated: July 2, 2003.

Brenda E. Dyer,

Department Deputy Clearance OIfficer, Department of Justice.

[FR Doc. 03–17330 Filed 7–8–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 2, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR's) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of these ICR's, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Vanessa Reeves on 202–693–4124 (this is not a toll-free number) or E-mail: *reeves.vanessa2@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Underground Retorts.

OMB Number: 1219–0096.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Type of Response: Reporting.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time Per Response: 160 hours.

Total Burden Hours: 160.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: 30 CFR Section 57.22401 pertains to safety requirements to be followed by mine operators in the use of underground retorts to extract oil from shale by heat or fire. Prior to ignition of retorts, the mine operator must submit a written plan indicating the acceptable levels of combustible gases and oxygen; specifications and location of off-gas monitoring procedures and equipment; procedures for ignition of retorts and details of area monitoring and alarm systems for hazardous gases and actions to be taken to assure the safety of miners.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of a currently approved collection.

Title: Product Testing by Applicant or Third Party.

OMB Number: 1219–0100.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Number of Respondents: 197

Information collection requirements	Annual responses	Average response time (hours)	Annual burden hours
Applications under Subpart B:			
New Application for Brattice Cloth and Ventilation Tubing	5	5.00	25
Application for Extension for Brattice Cloth and Ventilation Tubing	4	5.00	20
Reporting products not in accordance with approved specifications	25	0.25	6
Subtotal, Subpart B	34		51
Applications under Subpart C:			
New Application for Battery Approval	1	4.00	4
Application for Extension	1	4.00	4
RAMP Application	5	2.00	10
Reporting products not in accordance with approved specifications	16	0.25	4

Information collection requirements	Annual responses	Average response time (hours)	Annual burden hours
Develop Checklist	16	2.00	32
Subtotal, Subpart C	39		54
Applications under Subpart D:			
New Application for Brattice Cloth and Ventilation Tubing	1	4.00	4
Application for Extension for Brattice Cloth and Ventilation Tubing	1	2.00	2
Reporting products not in accordance with approved specifications	4	0.25	1
Develop Checklist	4	2.00	8
Subtotal, Subpart D	10		15
Applications under Subpart J:			
New Application	11	8.00	88
Application for Extension	6	6.00	36
RAMP Application	22	2.00	44
Reporting products not in accordance with approved specifications	14	0.25	4
Subtotal, Subpart J	53		172
Applications under Subpart K:			
New Application for Cable Approval	14	5.00	70
Application for Extension for Cable Approval	6	6.00	36
Application for Extension for Splice Kit Approval	1	6.00	6
Extension for Splice Kit Approval	1	7.00	7
Reporting products not in accordance with approved specifications	39	0.25	10
Subtotal, Subpart K	61		129
Total	197		421

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $58,429.

Description: 30 CFR part 7 subparts A through D, and subparts J and K provide procedures whereby products may be tested and certified by the applicant or a third party. Section 318 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 878, defines ''permissible'' equipment as that which has been approved according to specifications which are prescribed by the Secretary of Labor. This approval indicates that the Mine Safety and Health Administration's specifications and tests, designed to ensure that a product will not present a fire, explosion, or other specific safety hazard related to use, have been met.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–17323 Filed 7–8–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 2, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Applications to Employ Homeworkers Piece Rate Measurements, Homeworker Handbooks.

OMB Number: 1215–0013.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On occasion.

Type of Response: Recordkeeping; Reporting; and Third party disclosure.

Total Respondents: 4,650.

Information collection requirement	Form No.	Annual responses	Average response time (hours)	Annual burden hours
Application to Employ Homeworkers	WH–46	25	0.50	13
Homeworker Handbooks	WH–75	18,400	0.50	9,200
Piece Rate Measurement	N/A	150	1.00	150
Recordkeeping [1]	N/A	18,550	0.0083	154
Total		18,575		9,517

[1] Not included in total responses.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $10.00.

Description: These reporting and recordkeeping requirements for employers and employees in industries employing homeworkers are necessary to insure employees are paid in compliance with the Fair Labor Standards Act.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Rehabilitation Maintenance Certificate.

OMB Number: 1215–0161.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; and State, Local, or Tribal Government.

Frequency: Every four weeks.

Type of Response: Reporting.

Number of Respondents: 1,300.

Number of Annual Responses: 15,600.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 2,605.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The OWCP–17 serves as a bill submitted by the program participant or OWCP, requesting reimbursement of expenses incurred due to participation in an approved rehabilitation effort for the preceding four week period or fraction thereof.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–17324 Filed 7–8–03; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Application for Alien Employment Certification

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the Application for Alien Employment Certification. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 8, 2003.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 750, parts A and B, Application for Alien Employment Certification, should be directed to William L. Carlson, Ph.D., Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210. Dr. Carlson may also be reached at (202) 693–3010; this is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1182(a)(5)(A)), certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that: (1) There are not sufficient U.S. workers who are able, willing, qualified and available at the time of application for a visa and admission into the U.S. and at the place where the alien is to perform the work; and (2) the employment of the alien will not adversely affect the wages and working conditions of U.S. workers similarly employed. Form ETA 750, parts A and B, is the application form submitted by employers that forms the basis for a determination as to whether the Secretary shall provide such a certification. Form ETA 750, part A, is also utilized to collect information that permits the Department to meet Federal responsibilities for administering two nonimmigrant programs: the H–2A and H–2B temporary labor certification programs. The H–2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant aliens to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. The H–2B program establishes a means for employers to bring nonimmigrant aliens to the U.S. to perform nonagricultural work of a temporary or seasonal nature.

II. Focus of Review

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA, there is a need for an extension of an existing collection of information pertaining to employers' seeking to hire foreign workers for permanent or temporary employment in the U.S. by filing an Application for Alien Employment Certification on their behalf. There is an increase in burden due to a significant and sustained increase in the number of applications filed by employers each year.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration, Labor.

Title: Application for Alien Employment Certification.

OMB Number: 1205–0015.

Affected Public: Individuals or households; Businesses or other for-profit or not-for-profit institutions; Federal, State, Local, or Tribal governments; Farms.

Form: ETA 750, Parts A and B.

Total Respondents:

Permanent Program: 100,000.

H–2A Program: 4,200.

H–2B Program: 5,000.

Frequency of Response: On occasion.

Total Responses: 109,200.

Average Burden Hours Per Response:

Permanent Program: 2.8.

H–2A Program: 1.

H–2B Program: 1.4.

Estimate Total Annual Burden Hours: 291,200.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also be become a matter of public record.

Signed at Washington, DC, this 2nd day of July, 2003.

Emily Stover DeRocco,

Assistant Secretary.

[FR Doc. 03–17325 Filed 7–8–03; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313 and 50–368]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Renewed Facility Operating License (FOL) No. DPR–51 and FOL No. NPF–6, issued to Entergy Operations, Inc.(the licensee), for operation of Arkansas Nuclear One (ANO), Units 1 and 2 (ANO–1 and ANO–2), respectively, located in Pope County, Arkansas.

The proposed amendments would allow the licensee to use the spent fuel crane (L–3 crane) to lift heavy loads in excess of 100 tons. Specifically the licensee is requesting approval to use the upgraded L–3 crane for loads up to a total of 130 tons. This application was previously noticed and published in the **Federal Register** on March 7, 2003 (68 FR 11157).

The amendment application, as supplemented, was submitted on an exigent basis based on the following. The licensee has worked expeditiously to revise the appropriate design basis and to confirm the crane's implementation completeness. The licensee has performed available load lifts within the existing design basis to the extent possible. Additionally, the licensee will be seeking an alternate loading pattern for the ANO–2 spent fuel pool that will alleviate interim space limitations due to degradation of the neutron absorbing boroflex panels. Given the acceptability of the alternate loading pattern amendment, the ANO–2 spent fuel pool will be able to accept a full core offload; however, the spent fuel pool will be severely restricted for other potentially necessary spent fuel pool movements and activities (*i.e.*, fuel examinations). In order to provide critical space in the ANO–2 spent fuel pool, the licensee will need to perform fuel transfers using the new Holtec casks during August 2003. To accomplish the first loading of the new Holtec cask, preparation for cask component heavy load movement requiring the use of the L–3 crane must start the week of July 28, 2003. This schedule will support demonstration of cask component handling capability as required by 10 CFR part 72 prior to loading nuclear fuel. Therefore, the licensee requests NRC approval by July 25, 2003, in order to make final preparations for these cask loading activities.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

ANO Response: No.

The potential load carrying capability of the new L–3 crane has been increased from 100 tons to 130 tons. The transporting of a spent fuel cask is the maximum load that the crane is designed to handle. The process for transporting a cask is essentially unchanged from that previously performed. Once a cask is loaded with spent fuel it is lifted from the cask loading pit, transported to the hatch, and lowered to the railroad bay. This building arrangement is such that the cask is never carried over the spent fuel pool. The transport height of the cask has been increased to a minimum of 1.5 feet based on the design of the new L–3 crane. The impact limiters used under the previous cask transport process have been eliminated since the L–3 crane is now single failure proof. Because the crane is single failure proof, a postulated cask drop is no longer a credible event; therefore, no adverse effects on plant operation are anticipated to occur and the structural integrity of the spent fuel cask will not be impaired.

If a portion of the L–3 crane lifting devices malfunction or fail, the crane system is designed such that the load will move a limited distance downward prior to backup restraints becoming engaged. The increased

minimum transport height (1.5 feet) is established to accommodate this design feature. [A single malfunction or failure of a portion of the crane will not result in the load being dropped. This will allow additional restrictions such as impact limiters to be removed. The radiological consequences will not be increased.] The consequences on the spent fuel contained in the cask have been analyzed under an assumed dropped cask event and has been determined to be within design basis limits for the cask.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

ANO Response: No.

The ANO Safety Analysis Reports (SARs) have previously analyzed the drop of a cask up to 100 tons. The cask load has been increased to a maximum of 125 tons under the new single failure proof L–3 crane design for heavier casks being employed at ANO. This increased load could provide a severe impact on safety-related equipment if a load drop event were to occur. However, to ensure that no safety-related equipment is impacted, the construction of a single failure proof crane mitigates the potential for a more severe consequence, since a load drop event is not considered credible.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

ANO Response: No.

The L–3 crane has been upgraded to comply with the single failure proof requirements of NUREG–0554 [Single Failure Proof Cranes for Nuclear Power Plants] and Revision 3 of the NRC approved Ederer Topical Report EDR–1 dated October 8, 1982. To comply with the requirements of the topical report the L–3 crane was updated to provide additional load carrying capability and additional safety features were provided to prevent a cask drop event. The safety margins provided by the new crane design have either remained the same or have been enhanced to ensure adequate margin to prevent failure of the crane or any lifting devices associated with the lifting of a spent fuel cask.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 23, 2003, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject FOLs and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if

proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 24, 2003, as supplemented by letters dated March 25 and June 30, 2003, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of July, 2003.

For the Nuclear Regulatory Commission

Thomas W. Alexion,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–17335 Filed 7–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390, License No. NPF–50]

Tennessee Valley Authority; Receipt of Request for Action

Notice is hereby given that by petition dated May 30, 2003, Mr. David Lochbaum (petitioner), on behalf of the Union of Concerned Scientists (UCS), has requested that the NRC take action with regard to the Watts Bar Nuclear Plant. The petitioner requested that Tennessee Valley Authority (TVA) be required to provide specific information relating to possible corrosion of the reactor coolant pressure boundary at the Watts Bar Nuclear Plant due to defects in the stainless steel cladding applied to the interior surface of the carbon steel reactor pressure vessel to provide corrosion resistance against the borated water used as reactor coolant. The petitioner also requested that the NRC (a) provide UCS with copies of all correspondence sent to TVA regarding this petition and the subject cladding defects at Watts Bar, (b) provide UCS with advance notice of all public meetings conducted by the agency with TVA regarding this petition and the subject cladding defects, (c) provide UCS with an opportunity to participate in all relevant phone calls between NRC staff and TVA regarding this petition and the subject cladding defects at Watts Bar, and (d) provide UCS with copies of all correspondence sent to Members of Congress and/or industry organizations (*e.g.*, the Nuclear Energy Institute, the Electric Power Research Institute, the Institute for Nuclear Power Operations, *etc.*).

As the basis for this request, the petitioner states that in its original Safety Evaluation Report issued in 1982, the NRC accepted the defects in the stainless steel cladding on the cold leg nozzles of the Watts Bar reactor pressure vessel. In contrast, the petitioner states that when defects were discovered in the stainless steel cladding of safety injection accumulator tank, in 1993, it was not deemed permissible to leave them ''as-is.'' Furthermore, the petitioner noted that the NRC issued two bulletins: Bulletin 2001–01, ''Circumferential Cracking of Reactor Pressure Head Penetration Nozzles,'' dated August 3, 2001, requiring all pressurized-water reactor (PWR) licensees to supply information on the control rod drive mechanism nozzles; and Bulletin 2002–02, ''Reactor Pressure Vessel Head and Vessel Head Penetration Nozzles Inspection Programs,'' dated August 9, 2002, requiring all PWR licensees to undertake inspections of reactor coolant pressure boundary components and provide information to NRC.

The request is being handled in accordance with Title 10 of the Code of Federal Regulations (10 CFR) § 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner did not request any immediate action at Watts Bar Nuclear Plant. A copy of the petition is available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly

available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of July 2003.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 03–17334 Filed 7–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–16]

Notice of Issuance of Amendment to Materials License SNM–2507, Virginia Electric and Power Co., North Anna Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 2 to Materials License SNM–2507 held by Virginia Electric and Power Company (Dominion) for the receipt, possession, transfer, and storage of spent fuel at the North Anna Independent Spent Fuel Storage Installation (ISFSI), located in Louisa County, Virginia. The amendment is effective as of the date of issuance.

By application dated May 28, 2002, as supplemented on January 23, April 4, and May 21, 2003, Dominion requested to amend its ISFSI license to permit the storage of higher initial enrichment and burnup fuels in the TN–32 dry storage cask used at North Anna. This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

Also in connection with this action, the Commission prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). The EA and FONSI were published in the **Federal Register** on June 11, 2003 (68 FR 35013).

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30 day of June, 2003.

For the Nuclear Regulatory Commission.

Mary Jane Ross-Lee,

Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–17333 Filed 7–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of July 7, 14, 21, 28, August 4, 11, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED: Week of July 7, 2203

There are no meetings scheduled for the Week of July 7, 2003.

Week of July 14, 2003—Tentative

Thursday, July 17, 2003

12:30 p.m.—Discussion of Management Issues (Closed-Ex. 2).

Week of July 21, 2003—Tentative

There are no meetings scheduled for the Week of July 21, 2003.

Week of July 28, 2003—Tentative

There are no meetings scheduled for the Week of July 28, 2003.

Week of August 4, 2003—Tentative

There are no meetings scheduled for the Week of August 4, 2003.

Week of August 11, 2003—Tentative

There are no meetings scheduled for the Week of August 11, 2003.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information

By a vote of 3–0 on July 2, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Management Issues (Closed-Ex. 2)'' be held on July 2, and on less than one week''s notice to the public.

By a vote of 3–0 on July 2, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Connecticut Yankee Atomic Power Co. (Haddam Neck Plant License Termination Plan); Intervenor's petition to consider dose standard with respect to children'' be held on July 2, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 3, 2003.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 03–17458 Filed 7–7–03; 10:46 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Baseball Expos, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from the Baseball Expos, L.P., for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before August 25, 2003.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the same address. Comments also may be sent by Internet e-mail to *reg.comments@pbgc.gov.* The PBGC will make the comments received available on its Web site, *http://www.pbgc.gov.* Copies of the comments and the non-confidential portions of the request may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–325–4040).

FOR FURTHER INFORMATION CONTACT: Jason E. Wolf, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4020. (For TTY/TDD users, call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contributions base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. § 552(b)(4) (Freedom of Information Act).

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the Baseball Expos, L.P. (the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Montreal Expos Baseball Team from the Florida Marlins, L.P.(fka Montreal Expos, L.P.) (the ''Seller'') on February 15, 2002. In the request, the Buyer represents among other things that:

1. The Seller was obligated to contribute to the Major League Baseball Players Benefit Plan (the ''Plan'') for certain employees of the sold operations.

2. The Buyer has agreed to assume the obligation to contribute to the Plan for

substantially the same number of contribution base units as the seller.

3. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Fund within the five plan years following the sale and fail to pay its withdrawal liability.

4. The estimated amount of the unfunded vested benefits allocated to the seller with respect to the operations subject to the sale could be as high as $11,200,000.

5. The amount of the bond/escrow established under section 4204(a)(1)(B) is $1,254,904.

6. The major league clubs have established the Major League Central Fund (the ''Central Fund'') pursuant to the Major league Constitution. Under this agreement, contributions to the plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's pension liability under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games; (ii) radio and television revenue from World Series, League Championship Series, Division Series, All-Star Games, and (iii) certain other radio and television revenue, including revenues foreign broadcasts from regular, spring training and exhibition games.

7. In support of the waiver request, the requester asserts that:

''The Plan is funded directly from Revenues which are paid from the Central Fund directly to the Plan without passing through the hands of any of the clubs. Therefore, the Plan enjoys a substantial degree of security with respect to contributions on behalf of the clubs. A change in ownership of a club does not affect the obligation of the Central Fund to fund the Plan out of the Revenue. As such, approval of this exemption request would not significantly increase the risk of financial loss to the Plan.''

8. During the 2000 Plan year, approximately $29.3 million was paid into the Plan on behalf of all major league clubs.

9. A complete copy of the request was sent to the Plan and to the Major League Baseball Players Association by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. The PBGC will make the comments received available on its Web site, *http://www.pbgc.gov.* Copies of the comments and the non-confidential portions of the request may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–325–4040).

Issued at Washington, DC, on this 2nd day of July, 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 03–17349 Filed 7–8–03; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Florida Marlins, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from the Florida Marlins, L.P., for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before August 25, 2003.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the same address. Comments also may be sent by Internet e-mail to *reg.comments@pbgc.gov.* The PBGC will make the comments received available on its Web site, *http://www.pbgc.gov.* Copies of the comments and the non-confidential portions of the request may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–325–4040).

FOR FURTHER INFORMATION CONTACT: Jason E. Wolf, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4020. (For TTY/TDD users, call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions

to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (Freedom of Information Act).

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the Florida Marlins, L.P. (formerly known as Montreal Expos, L.P.) (the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Florida Marlins Baseball Team from the F.M.B.C. II, L.L.C. (the ''Seller'') on February 15, 2002. In the request, the Buyer represents among other things that:

1. The Seller was obligated to contribute to the Major League Baseball Players Benefit Benefit Plan (the ''Plan'') for certain employees of the sold operations.

2. The Buyer has ageed to assume the obligation to contribute to the Plan for substantially the same number of contribution base units as the seller.

3. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Fund within the five plan years following the sale and fail to pay its withdrawal liability.

4. The estimated amount of the unfunded vested benefits allocated to the seller with respect to the operations subject to the sale could be as high as $11,200,000.

5. The amount of the bond/escrow established under section 4204(a)(1)(B) is $1,254,904.

6. The major league clubs have established the Major League Central Fund (the ''Central Fund'') pursuant to the Major League Constitution. Under this agreement, contributions to the plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's pension liability under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games; (ii) radio and television revenue from World Series, League Championship Series, Division Series, All-Star Games, and (iii) certain other radio and television revenue, including revenues foreign broadcasts from regular, spring training and exhibition games.

7. In support of the waiver request, the requester asserts that:

''The Plan is funded directly from Revenues which are paid from the Central Fund directly to the Plan without passing through the hands of any of the clubs. Therefore, the Plan enjoys a substantial degree of security with respect to contributions on behalf of the clubs. A change in ownership of a club does not affect the obligation of the Central Fund to fund the Plan out of the Revenue. As such, approval of this exemption request would not significantly increase the risk of financial loss to the Plan.''

8. During the 2000 Plan year, approximately $29.3 million was paid into the Plan on behalf of all major league clubs.

9. A complete copy of the request was sent to the Plan and to the Major League Baseball Players Association by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. The PBGC will make the comments received available on its Web site, *http://www.pbgc.gov.* Copies of the comments and the non-confidential portions of the request may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–325–4040).

Issued at Washington, DC, on this 2nd day of July, 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 03–17350 Filed 7–8–03; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 3104 and SF 3104B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 3104, Application for Death Benefits/Federal Employees Retirement System (FERS), is used by persons applying for death benefits which may be payable under FERS because of the death of an employee, former employee, or retiree who was covered by FERS at the time

of his/her death or separation from Federal Service. SF 3104B, Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death, is used by applicants for death benefits under FERS if the deceased was a Federal employee at the time of death.

Comments are particularly invited on:

• Whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;

• Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

• Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

It is estimated that approximately 4,873 SF 3104s will be processed annually. This form requires approximately 60 minutes to complete. An annual burden of 4,873 hours is estimated. Approximately 3,188 SF 3104Bs are expected to be processed annually. It is estimated that the form requires approximately 60 minutes to complete. An annual burden of 3,188 hours is estimated. The total annual burden is 8,061.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415–3660.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–17382 Filed 7–8–03; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48115; File No. SR–CBOE–2003–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated to Interpret Rules Relating to Margin Requirements for Certain Complex Options Spreads on a Pilot Basis

July 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 8, 2003, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 26, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to issue a Regulatory Circular to its membership setting forth a clarifying interpretation to CBOE Rule 12.3, Margin Requirements, relating to margin requirements for certain complex option spreads. Below is the text of the proposed Regulatory Circular. Additions are *italicized.*

* * * * *

To: Member Organizations
From: Division of Regulatory Services
Date: _____, 2003

Subject: Margin Requirements for Certain Complex Spreads
Exchange: James Adams (312) 786–7718
Contacts: Richard Lewandowski (312) 786–7183

KEY POINTS

• *Certain complex option spreads (specified below) are the equivalent of combining two or more spreads that are currently recognized in the margin rules of the Chicago Board Options Exchange (the ''Exchange'' or ''CBOE'').*

• *Because these complex spreads can be shown to equate to aggregations of two or more currently recognized spreads, current margin rules are deemed to provide a margin requirement for each complex spread in that the rules provide a margin requirement for each spread in the equivalent aggregation.*

• *Member organizations may require margin for these complex spreads of not less than the sum of the margin required on each spread in the equivalent aggregation.*

• *The margin requirements set forth in this Regulatory Circular will be in effect as a pilot until (Insert date that is one (1) year from the date of approval of the Regulatory Circular by the Commission).*

Discussion

It is known that certain complex spread configurations are the net result of combining two or more spread strategies that are currently recognized in the Exchange's margin rules. Specific complex spread configurations are listed below, along with the currently recognized spreads to which they can be traced. The expiration months, exercise prices, interval between exercise prices, and option premiums used in each configuration are for illustration only. However, as illustrated, the expiration months and sequence of the exercise prices must fit the same pattern, and the intervals between the exercise prices must be equal. Note that netting of contracts in option series common to each of the currently recognized spreads in an aggregation reduces it to the complex spread.

	Feb 45 @ .5	Feb 50 @ 1	Feb 55 @ 2	Feb 45 @ 16.5	Feb 50 @ 12	Feb 55 @ 8	Feb 60 @ 6	Feb 65 @ 5	Apr 60 @ 7
Long Butterfly	.....	.....	.....	.....	*1*	*−2*	*1*	.....	.....
Long Butterfly	.....	.....	.....	.....	.....	*1*	*−2*	*1*	.....
Net—Configuration I	.....	.....	.....	.....	*1*	*−1*	*−1*	*1*	.....

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 provides that the Regulatory Circular will be in effect as a one-year pilot from the date of approval of the proposed rule change.

	Feb 45 @ .5	Feb 50 @ 1	Feb 55 @ 2	Feb 45 @ 16.5	Feb 50 @ 12	Feb 55 @ 8	Feb 60 @ 6	Feb 65 @ 5	Apr 60 @ 7
Long Butterfly					1	−2	1		
Short Box		1	−1		−1	1			
Net—Configuration II		1	−1			−1	1		
Long Butterfly					1	−2	1		
Long Butterfly						1	−2	1	
Short Box		1	−1		−1	1			
Net—Configuration III		1	−1				−1	1	
Long Time Spread							−1		
Long Butterfly					1	−2	1		
Net—Configuration IV					1	−2			1
Long Time Spread							−1		1
Long Butterfly					1	−2	1		
Long Butterfly				1	−2	1			
Net—Configuration V				1	−1	−1			1
Long Time Spread							−1		1
Long Butterfly					1	−2	1		
Short Box		1	−1		−1	1			
Net—Configuration VI		1	−1			−1			1
Long Time Spread							−1		1
Long Butterfly					1	−2	1		
Long Butterfly				1	−2	1			
Short Box	1	−1		−1	1				
Net—Configuration VII	1	−1				−1			1

As illustrated above, the complex spread configurations equate to aggregations of currently recognized spreads. Therefore, for complex spreads fitting the above configurations, whether established outright or through netting, member firms must require initial and maintenance margin of not less than the sum of the margin required on each of the currently recognized spreads in the applicable aggregation subject to the following limitations:

- *the complex spread must be carried in a margin account,*
- *European style options are not permitted for the configurations involving time spreads (IV through VII),*
- *the intervals between exercise prices must be equal, and*
- *each complex spread must comprise four option series, except for Configuration IV, which must comprise three option series.*

Summing the margin required on each currently recognized spread in each of the applicable aggregations renders a margin requirement for the subject complex spread configurations as follows:

Configuration	Margin Requirement
I	Pay for the net debit in full.
II	Exercise price interval (aggregate), net credit may be applied.
III	Exercise price interval (aggregate), net credit may be applied.
IV	Pay for the net debit in full.
V	Pay for the net debit in full.
VI	Exercise price interval (aggregate), net credit may be applied.
VII	Exercise price interval (aggregate), net credit may be applied.

Using Configuration III as an example, the margin requirement and SMA debit or margin call would be as follows:

	PUTS		CALLS			
	Feb 50 @1	Feb 55 @2	Feb 50 @12	Feb 55 @8	Feb 60 @6	Feb 65 @5
Long Butterfly #1			1	−2	1	
Long Butterfly #2				1	−2	1
Short Box #1	1	−1	−1	1		
Net—Configuration III	1	−1			−1	1

Margin Calculation: $5.00 × 1 contract × 100 shares =$500.00

Margin Requirement: $500.00

SMA Debit or Margin Call: $500.00 − $200.00 = $300.00

Explanation: The initial and maintenance margin requirement is the exercise price interval (aggregate). Establishing this complex spread results in a net credit of $200.00 that may be applied to the margin requirement.

As shown in the table below, the same margin requirement, and SMA debit or margin call, would result by taking the sum of the margin required on each spread in the equivalent aggregation.

	Net dr or er	Margin Req.	Deposit
Long Butterfly	$200 dr	0	$200
Long Butterfly	$100 dr	0	100
Short Box #1	$500 cr	$500	0
Total	$200 cr	500	300

The margin requirements set forth in this Regulatory Circular will be in effect as a pilot until {insert date one (1) year from the date of approval of the Regulatory Circular by the Commission}.

Questions regarding margin requirements should be directed to James Adams at (312) 786–7718 or Richard Lewandowski at (312) 786–7183.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt an interpretation to CBOE Rule 12.3—Margin Requirements—to clarify that margin requirements for certain complex option spreads are provided for under CBOE Rule 12.3. The Exchange proposes to implement this interpretation through a Regulatory Circular that will set forth the margin requirements for such complex spreads. The Exchange believes that the complex spreads in question are simply another way of expressing a collection of two or more basic option spreads (*i.e.*, the butterfly spread, the box spread, and the time spread) already covered under the margin rules. Therefore, the Exchange believes that the complex spread margin requirements are reasonably implied by, and are a logical extension of, the current margin rules. The proposed Regulatory Circular is intended to be a temporary measure and will operate as a pilot for one year from the date of approval of the Regulatory Circular by the Commission.

The proposed Regulatory Circular identifies seven complex spread configurations, each of which can be shown to equate, on a risk/reward basis, to a package of two or more basic spread strategies that are already identified and ascribed a margin requirement under the Exchange's current margin rules. According to the Exchange, netting the common option series between the basic spreads in the package corresponding to a complex spread actually results in the complex spread. Therefore, the Exchange believes that a complex spread can be viewed as the sum of two or more basic spreads. The Exchange believes further that for each complex spread configuration identified in the proposed Regulatory Circular, the sum of the margin required on the basic spreads in an equivalent package covers the maximum risk of the complex spread, and is an appropriate minimum requirement.

The proposed Regulatory Circular holds that a margin requirement for each of the seven complex spread configurations identified is, in effect, provided for under current CBOE margin rules because they equate to basic spread strategies for which margin requirements are already specified. Therefore, according to the Exchange, the proposed Regulatory Circular will allow member organizations to require margin for the subject complex spreads, whether established outright or through netting, of not less than the sum of the margin required on each basic spread in its corresponding package.

To be eligible for the margin requirements set forth in the proposed Regulatory Circular, a complex spread must match one of the seven patterns specified in the proposed Regulatory Circular. Furthermore, the proposed Regulatory Circular mandates that: (1) Complex spreads must be carried in a margin account; (2) European-style options are prohibited for complex spread configurations having a long option series that expires after the other option series (*i.e.*, involves a time spread); (3) the intervals between exercise prices of each option series must be equal; and (4) each complex spread must comprise four option series, with the exception of one configuration, which must comprise three option series. In view of these limitations, the Exchange believes the complex spread margin requirements are non-controversial.

2. Statutory Basis

The Exchange believes that the proposed Regulatory Circular clarifies that the Exchange's current margin rules extend to complex option spreads, thereby, allowing investors to more efficiently implement these strategies. As such, the Exchange believes that the proposed Regulatory Circular interpretation of CBOE Rule 12.3 is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[4] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed Regulatory Circular interpretation of CBOE Rule12.3 will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed Regulatory Circular interpretation of CBOE Rule 12.3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CBOE–2003–24 and should be submitted by July 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17274 Filed 7–8–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48121; File No. SR–DTC–2003–06]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Restrict the Next-Day Matched Reclamation Process

July 2, 2003.

I. Introduction

On April 7, 2003, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR-DTC–2003–06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on May 29, 2003.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

DTC's current reclamation procedures allow participants to submit reclamations to reverse completed Deliver Order (''DO'') and Payment Order (''PO'') transactions. When reclamation instructions are received, DTC currently attempts to match the reclaim with a completed original transaction processed on the current day (''same-day reclaims'') or on the preceding business day (''next-day reclaims''). Reclamations that are not matched to original deliveries are considered unmatched reclaims and are subject to the same rules and controls as original transactions. Reclamations that are matched to original deliveries are considered matched reclaims and are permitted to bypass the Receiver Authorized Delivery (''RAD'') system and override DTC's risk management controls if they are DOs less than $15 million or POs less than $1 million.[3] In addition, matched reclamations can be processed in the exclusive reclaim period (3:20 p.m. to 3:30 p.m.) and cannot be re-reclaimed by the receiver (*i.e.*, the original deliverer).

Reclamations in general and next-day reclamations in particular impair the finality of settlement and prolong the period during which delivering participants and DTC are at risk. To minimize this exposure, DTC is eliminating the next-day matched reclamation process. Under its revised procedures, DTC will continue to accept reclamation instructions and link those reclaim transactions to original transactions. However, only reclamation transactions that are linked to original transactions processed the same processing day will be considered matched. Only matched reclaim transactions will be permitted to bypass RAD and DTC's risk management controls. In addition, only matched reclaim transactions can be submitted in the exclusive reclaim period and will be blocked from subsequent re-reclamation by the receiver.

Reclamation transactions that are linked to original transactions processed prior to the current processing day will be processed in the same manner as other deliveries. That is, they will not bypass RAD or DTC's risk management controls. Linked reclamations will have to be submitted during normal input times and cannot be submitted in the exclusive reclaim period. Furthermore, a participant receiving a linked reclamation that it believes is inappropriate will be able to re-reclaim that transaction. To allow participants to continue to automatically track transaction status changes, however, both matched and linked reclaim output will contain the Relative Block Number assigned by DTC of both the reclamation transaction and the original transaction.

DTC plans to implement the enhancements to the reclamation process in phases. Beginning July 17, 2003, DTC will eliminate the next-day matched reclaim process for money market instruments (''MMIs''). DTC plans to eliminate the next-day matched reclaim capability for all other securities late in 2003 or early in 2004. At that time, DTC will begin linking reclamation transactions with original transactions processed in the preceding 60 days.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[4] The Commission finds that DTC's proposed rule change is consistent with this requirement because it should bring

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47899 (May 21, 2003), 68 FR 32143.

[3] RAD is a control mechanism that allows participants to review transactions prior to completion of processing in order to limit exposure from misdirected or erroneously entered deliveries or payment orders. The override of RAD and DTC's risk management controls is designed to address industry concern that the receiver not be ''stuck'' with a delivery it does not know because of RAD or the risk management controls.

[4] 15 U.S.C. 78q–1(b)(3)(F).

more finality to the settlement process and as such facilitates prompt and accurate clearance and settlement and safety and soundness at DTC.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2003–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17355 Filed 7–8–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release 34–48116; File No. 600–23]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

July 1, 2003.

The Securities and Exchange Commission (''Commission'') is publishing this notice and order to solicit comments from interested persons and to extend the Fixed Income Clearing Corporation's (''FICC'') temporary registration as a clearing agency through June 30, 2004.[1]

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act[2] and Rule 17Ab2–1 promulgated thereunder,[3] the Commission granted the Government Securities Clearing Corporation (''GSCC'') registration as a clearing agency on a temporary basis for a period of three years.[4] The Commission subsequently has extended GSCC's registration through June 30, 2003.[5]

On February 2, 1987, pursuant to Sections 17A(b) and 19(a) of the Act[6] and Rule 17Ab2–1 promulgated thereunder,[7] the Commission granted MBS Clearing Corporation (''MBSCC'') registration as a clearing agency on a temporary basis for a period of eighteen months.[8] The Commission subsequently has extended MBSCC's registration through June 30, 2003.[9]

FICC has requested that the Commission extend FICC's temporary registration until such time as the Commission is prepared to grant FICC permanent registration.[10]

The Commission today is extending FICC's temporary registration as a clearing agency in order that FICC may continue to provide its users clearing and settlement services as a registered clearing agency while the Commission seeks comment on granting FICC permanent registration as a clearing agency.[11] FICC acts as the central clearing entity for the U.S. Government securities trading and financing marketplaces and provides for the safe and efficient clearance and settlement of transactions in mortgage-backed securities.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[12] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. 600–23. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the application for registration and all written comments will be available for inspection and copying at the principal office of FICC. All submissions should refer to File No. 600–23 and should be submitted by July 30, 2003.

It is therefore ordered that FICC's temporary registration as a clearing agency (File No. 600–23) be and hereby is extended through June 30, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17275 Filed 7–8–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

[1] On January 1, 2003, MBS Clearing Corporation (''MBSCC'') was merged into the Government Securities Clearing Corporation (''GSCC'') and GSCC was renamed the Fixed Income Clearing Corporation. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) File Nos. [SR–GSCC–2002–07 and SR–MBSCC–2002–01].

[2] 15 U.S.C. 78q–1(b) and 78s(a).

[3] 17 CFR 240.17Ab2–1.

[4] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[5] Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8988; 44553 (July 13, 2001), 66 FR 37714; 45164 (December 18, 2001), 66 FR 66957; and 46135 (June 27, 2002), 67 FR 44655.

[6] *Supra* note 2.

[7] *Supra* note 3.

[8] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[9] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; 44831 (September 21, 2001), 66 FR 49728; 45607 (March 20, 2002), 67 FR 14755; and 46136 (June 27, 2002), 67 FR 44655.

[10] Letter from Jeffrey Ingber, Managing Director, General Counsel, and Secretary, FICC (May 28, 2003).

[11] The Commission continues to consider two issues related to FICC's permanent registration status: (1) FICC's organizational structure after its integration with The Depository Trust & Clearing Corporation and (2) the appropriate standard of care for FICC.

[12] 15 U.S.C. 78s(a)(1).

[13] 17 CFR 200.30–3(a)(1506).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48120; File No. SR–NASD–2003–83]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to an Amendment to the Automated Confirmation Transaction Service Concerning Late Trade Reports

July 2, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 26, 2003, Nasdaq amended the proposal.[3] Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(1) thereunder,[5] as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal

Nasdaq proposes to modify the Automated Confirmation Transaction Service (''ACT'') to append the .SLD modifier, as appropriate, to trade reports submitted to ACT. There is no proposed rule language.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 25, 2003 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaces and supersedes the original proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A). For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on June 26, 2003, the date Nasdaq filed Amendment No. 1.

[5] 17 CFR 240.19b–4(f)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD trade reporting rules are designed to ensure timely and accurate reports of executed trades. Timely and accurate trade reporting is essential to the maintenance of a fair and orderly market. Therefore, NASD rules require members to identify reports of transactions that are not indicative of the current market for the security.[6] For example, the .SLD trade report modifier must be appended to trade reports that are submitted to ACT more than 90 seconds after the trade was executed. Trade reports that do not include the .SLD modifier are included in the last sale, high price, and low price calculations for a security because Nasdaq's systems assume that trades without this modifier, or any other modifier, are normal trades indicative of the current market. Therefore, when trades are reported late and erroneously do not include the proper modifier (and are therefore included in these calculations), the market can be distorted because the price being reported may be significantly different from the contemporaneous market. The potential misinformation could cause confusion for members, issuers, and investors and could lead to investment decisions being made based upon inaccurate information.

Today, ACT does not automatically append the .SLD modifier to late trade reports. Therefore, the integrity of the information disseminated relies on members complying with their obligation to report trades accurately. NASD conducts surveillance of its members for compliance with the trade reporting rules and does bring disciplinary actions against members that fail to include the .SLD modifier on late trade reports. Nevertheless, members occasionally fail to include the .SLD modifier on late trade reports and the immediate result is that potentially misleading information is disseminated.[7] Therefore, to prevent this result, Nasdaq is proposing to modify ACT to append the .SLD modifier automatically for trades executed during normal market hours that are reported late. The .SLD modifier is not used for trades executed in the pre-market and after-hours trading sessions.

To append the modifiers automatically, ACT must be reprogrammed to include a validation parameter that compares the time of execution and trade report time to the modifier field. Once the validation parameter is operative, if a trade report is submitted more than 90 seconds after the time of execution, and the time of execution was during normal market hours, ACT will append the .SLD modifier automatically.

The validation parameter relies on the time of execution to identify improperly reported trades and append the .SLD modifier. Today, nearly all trades reported to Nasdaq include the time of execution, but some are still reported without this information.[8] Therefore, a small number of improperly reported trades will not be corrected and thus will continue to be included automatically in the last sale, high price, and low price calculations. However, Nasdaq staff will continue to conduct surveillance for these instances and manually correct the calculations, as appropriate, when such errors are discovered. To eliminate the small number of incidences in which ACT cannot identify and correct improperly reported trades, Nasdaq soon will file a proposal to require the time of execution on all trade reports.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] in that the proposed rule change will prevent nearly all late trade reports from being included in the calculations designed to inform investors of the current market for a security. As a

[6] *See, e.g.*, NASD Rule 5430(a).

[7] There are few incidences in which trades are reported without the .SLD modifier. In fact, only .03% of trades are reported more than 90 seconds after execution and only a small number of these late reports do not contain the .SLD modifier. However, while this is not a widespread problem, the quality of information disseminated can be improved by eliminating even the small number of incidences in which late trade reports are erroneously included in the last sale calculation.

[8] Today, over 99% of the trades submitted to ACT include the time of execution.

[9] 15 U.S.C. 78o–3(b)(6).

result, members and the public will possess more accurate information when making investment decisions.

B. Self-Regulatory Organization's Statement of Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[10] and Rule 19b–4(f)(1)[11] thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–83 and should be submitted by July 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17357 Filed 7–8–03; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48118; File No. SR–NYSE–2003–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Fingerprint-Based Background Checks of Exchange Employees and Others

July 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 30, 2003, the NYSE filed an amendment to the proposed rule change.[3] On June 27, 2003, the NYSE filed a second amendment to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, from Darla C. Stuckey, Corporate Secretary, NYSE (May 28, 2003) (''Amendment No. 1''). In Amendment No. 1, the NYSE eliminated all references related to the possible application of the proposed rule to members of the media.

[4] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Mary Yeager, Assistant Secretary, NYSE (June 27, 2003) (''Amendment No. 2''). In Amendment No. 2, the NYSE eliminated the following proposed rule text ''; or other circumstances in which the Exchange concludes that the person's access to facilities and records does not place the security thereof at risk.'' The Exchange opted to delete the rule text due to the Commission's concern that such language was overbroad.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to adopt a new rule pursuant to which the Exchange would obtain fingerprints from prospective and current employees, temporary personnel, independent contractors, and service providers of each of the Exchange and its principal subsidiaries; submit those fingerprints to the Attorney General of the United States or his or her designee for identification and processing; and receive criminal history record information from the Attorney General of the United States or his or her designee for evaluation and use, in accordance with applicable law, in enhancing the security of the facilities, systems, data, and/or records of the Exchange or its principal subsidiaries (collectively, ''facilities and records''). The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

NYSE Rule 28—Fingerprint-Based Background Checks of Exchange Employees and Others

(a) In order to enhance the security of the respective facilities, systems, data, and/or records of the New York Stock Exchange, Inc. (''the Exchange'') and its principal subsidiaries (collectively, ''facilities and records''), the Exchange shall obtain fingerprints from, and conduct a fingerprint-based background check of, all prospective and current employees, temporary personnel, independent contractors, and service providers of each of the Exchange and its principal subsidiaries. However, the Exchange may determine not to obtain fingerprints from, or to seek fingerprint-based background information with respect to, a person due to that person's limited, supervised, or restricted access to facilities and records, or the nature or location of his or her work or services. The Exchange shall apply this rule in all circumstances where permitted by applicable law.

(b) The Exchange shall submit fingerprints obtained pursuant to this rule to the Attorney General of the United States or his or her designee for identification and processing. The Exchange shall at all times maintain the security of all fingerprints provided to, and all criminal history record information received from, the Attorney General or his or her designee. The Exchange, however, may provide a subsidiary with access to information from background checks based on fingerprints obtained from that

subsidiary. The Exchange shall not redisseminate fingerprints or information to the extent prohibited by applicable law.

(c) The Exchange shall evaluate information received from the Attorney General or his or her designee and otherwise administer this rule in accordance with Exchange fingerprint procedures as in effect from time to time and the provisions of applicable law. Fingerprint-based background information, such as a felony or serious misdemeanor conviction, will be a factor in making employment decisions; engaging or retaining any temporary personnel, independent contractors, or service providers; or permitting any fingerprinted person access to facilities and records.

Supplementary Material

.10 Fingerprints and the Issuance of Identification Badges. The Exchange intends, with limited exceptions, to obtain fingerprints from, and fingerprint-based background information with respect to, all employees, temporary personnel, independent contractors, and service providers who receive Exchange-issued photo badges or other identification permitting them access to facilities and records for more than one day (''Long-Term Badges''). The Exchange has the capacity electronically to immediately limit or terminate the access to facilities and records that Long-Term Badges permit, and reserves the right to do so. On a case-by-case basis, the Exchange may determine not to obtain fingerprints from a person to whom a Long-Term Badge is issued, based on the decision of a committee of Exchange officers who oversee application of the rule that there exists an exception to obtaining the fingerprints, as contemplated by the rule.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The events of September 11, 2001, including the resulting temporary disruption in the securities markets, have led national securities exchanges and other industry participants to carefully re-evaluate their security measures, with the objectives of enhancing investor protection, business continuity, and workplace safety.

The Exchange believes that fingerprint-based background checks of prospective and current employees, temporary personnel, independent contractors, and service providers of the Exchange and each of its principal subsidiaries, will assist the Exchange in satisfying those objectives and its other responsibilities under the Act by better preventing certain persons with criminal backgrounds from gaining access to facilities and records. As a condition of employment, new employees already undergo rigorous pre-hire review and screening, including education and employment verification and individual reference checks, under the direction of human resources professionals. Criminal records in local court files also may be reviewed based on locations of residence and employment provided by the candidate. This process, however, is dependent upon the candidate providing complete and accurate information.

Fingerprint-based background checks would enhance the ability to screen adequately employees and non-employees to determine better, in accordance with applicable law, whether there are unacceptable risks associated with granting such persons access to facilities and records. Through access to state-of-the-art information systems administered and maintained by the Federal Bureau of Investigation (''FBI'') and its Criminal Justice Information Services Division, the Exchange would receive centrally-maintained ''criminal history record information,'' which is arrest-based data and derivative information, and may include personal descriptive data; FBI number; conviction status; sentencing, probation and parole information; and such other information as the FBI may now or hereafter make available to the Exchange. This information is supplied to the FBI by various local, state, federal and/or international criminal justice agencies. Thus, the information obtained through fingerprint-based background checks would provide a more exhaustive and reliable profile of a candidate's criminal record, and thereby better facilitate risk assessment, than a physical review of court records based on information provided by the candidate.

Access to the FBI's nationwide database is particularly crucial with respect to the screening of temporary personnel, independent contractors, and service providers who are not employees of the Exchange or its principal subsidiaries and who therefore are not subject to the pre-hire review described above, but whose work frequently requires the same or similar access to facilities and records as that provided to employees of the Exchange or its principal subsidiaries. In furtherance of its commitment to utilize and improve technology and systems applications to better serve investors, disseminate market information, and ensure reliable order handling and execution for all market participants, the Exchange regularly retains outside vendors whose specialized expertise is required for the development, installation and servicing of this technology. Such vendors complement the work of Exchange technology staff in providing the investment community with an efficient and technologically advanced marketplace. Examples of persons from whom fingerprints may be obtained under the proposed rule change include the following,[5] all of whom are anticipated to need Exchange-issued photo badges or other identification permitting them access to facilities and records for more than one day: personnel providing temporary services to the Exchange but who are employed and provided by a staffing service and non-employee technicians whose work with Exchange software and equipment, although temporary, necessitates broad access to Exchange facilities.

The proposed access to criminal history information is consistent with federal law. Section 17(f)(2) of the Act[6] and Rule 17f–2 thereunder[7] require, subject to certain exemptions, a variety of securities industry personnel to be fingerprinted, including every member of a national securities exchange; brokers, dealers, transfer agents, and clearing agencies; and employees of such entities. Although section 17(f)(2) does not require the Exchange or other self-regulatory organizations to fingerprint their own employees,

[5] The proposed rule change would not be applicable to personnel of the Securities and Exchange Commission.

[6] 15 U.S.C. 78q(f)(2).

[7] 17 CFR 240.17f–2.

temporary personnel, independent contractors, or service providers, the statute specifically permits self-regulatory organizations designated by the SEC to have access to ''all criminal history record information.''[8]

The proposed access to criminal history information is also consistent with a recently enacted amendment to New York's General Business Law (''GBL''), which, among other things, requires self-regulatory organizations in New York to fingerprint their employees and those non-employee service providers whose access to facilities or records places the self-regulatory organization at risk.[9]

As stated in the proposed rule change, the Exchange will comply with all applicable laws relating to the use and dissemination of criminal history record information obtained from the FBI.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,[10] in general, and section 6(b)(5) of the Act,[11] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2003–18 and should be submitted by [insert date 21 days from the date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[12] and, in particular section 6(b)(5) of the Act.[13] The Commission believes that the proposed rule change should promote the objectives of the Act. The Commission notes that the Exchange is an important component of the National Market System and that a serious disruption in the operation of the Exchange could have a significant deleterious impact on the U.S. financial markets. The proposed rule change should promote the objectives of the Act by establishing procedures that help prevent a serious disruption in the operation of the Exchange. Specifically, the proposal should provide the Exchange with an effective tool for identifying individuals whose prior criminal activities may indicate that the individuals pose a heightened threat to the security of the Exchange's operations. Moreover, the Commission notes that, notwithstanding any other provisions of law, it has been granted the authority to designate self-regulatory organizations to receive all criminal history record information held by the Attorney General.[14] In approving this proposed rule filing, the Commission so designates the Exchange as being authorized to receive such criminal history record information held by the Attorney General.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to implement expeditiously its fingerprinting program and increase the security of the Exchange, generally. In addition, the Commission believes that accelerated approval is appropriate in this case because the instant NYSE rule proposal is substantially similar to a recently approved Nasdaq Stock Market, Inc. (''Nasdaq'') rule.[15]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–2003–18), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17356 Filed 7–8–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78q(f)(2).

[9] N.Y. Gen. Bus. Law 359-e (12-a) (McKinney 2003). New York's Labor Law prohibits fingerprinting for employment purposes unless otherwise permitted by law. N.Y. Labor Law 201-a (McKinney 2003). The GBL amendment ensures that such fingerprinting would not violate New York's Labor Law.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Section 17(f)(2) of the Act, 15 U.S.C. 78q(f)(2).

[15] *See* Nasdaq Rule 140, Fingerprint-Based Background Checks of Nasdaq Employees and Independent Contractors . See also Securities Exchange Act Release No. 47240 (January 23, 2003), 68 FR 4810 (January 30, 2003) (approving Nasdaq Rule 140).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48112; File No. SR–Phlx–2003–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Increasing Index Option Transaction Charges

June 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 30, 2003, the Philadelphia Stock Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges by increasing three index option transaction charges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to increase three index option transaction charges. Specifically, the Exchange proposes to increase the Registered Option Trader charge from $.19 per contract to $.21 per contract, to increase the Specialist charge from $.14 per contract to $.24 per contract, and to increase the Firm charge from $.10 per contract to $.15 per contract.[3] These increases are proposed to be effective for contracts settling on or after June 1, 2003. These fee increases will raise revenue for the Exchange, which should help offset rising Exchange costs associated with maintaining a competitive marketplace for its members and investors.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act in general,[4] and furthers the objectives of section 6(b)(4) of the Act in particular,[5] in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–39 and should be submitted by July 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17358 Filed 7–8–03; 8:45 am]

BILLING CODE 8010–01–P

[3] These index option transaction charges had previously been eligible for a monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49). The credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3512]

State of West Virginia (Amendment #2)

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 27, 2003, the above numbered declaration is hereby amended to include Berkeley, Lincoln, and Wyoming Counties in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides that occurred June 11, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Jefferson and Morgan Counties in the State of West Virginia; Washington County in the State of Maryland; and Clarke and Frederick Counties in the Commonwealth of Virginia. All other counties contiguous to the above named primary counties have been previously declared.

The number for economic injury for the State of Maryland is 9W1500.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 30, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–17256 Filed 7–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3512]

State of West Virginia (Amendment #1); Corrected Copy

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 21, 2003, the above numbered declaration is hereby amended to include Cabell, Mingo, and McDowell Counties in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides that occurred June 11, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Pike in the Commonwealth of Kentucky; Buchanan and Tazewell counties in the Commonwealth of Virginia; and Mercer County in the State of West Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The number for economic injury for the Commonwealth of Virginia is 9W1300.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 1, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–17255 Filed 7–8–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Airports; Notice of Reagan National Airport Lottery Allocation Procedures

AGENCY: Federal Aviation Administration.

ACTION: Notice of lottery and allocation procedures for slots at Washington Reagan National Airport.

SUMMARY: This notice announces a lottery for the allocation of limited air carrier and commuter slots in accordance with Title 14 of the Code of Federal Regulations § 93.225, Lottery of available slots.

DATES: July 9, 2003.

DATE/LOCATION OF LOTTERY: The lottery will be held in the Federal Aviation Administration (FAA) Auditorium, 3rd floor, 800 Independence Avenue, SW., Washington, DC 20591 on July 31, 2003, beginning at 12:30 p.m. Carriers that wish to participate in the lottery must notify, in writing, the FAA Slot Administration Office, Attention: AGC–220, 800 Independence Avenue, SW., Washington, DC 20591 or by facsimile to 202–267–7277. Notification must be received no later than 5 p.m. EDT on July 16, 2003.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3134.

SUPPLEMENTARY INFORMATION:

Background

The High Density Traffic Airports Rule, or ''High Density Rule,'' 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports; John F. Kennedy International Airport (JFK), LaGuardia, O'Hare International Airport (O'Hare), Ronald Reagan Washington National Airport (Reagan National) and Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a ''slot'' for each IFR takeoff or landing during a specific 30- or 60-minute period. The restrictions at Newark were lifted in the early 1970s. The restrictions at O'Hare were lifted in July 2002.

The allocation of permanent slots, not required for Essential Air Service, during peak hours is made in accordance with the lottery provisions in 14 CFR 93.225. The FAA will follow the procedures set forth in 14 CFR 93.225 for this lottery. Title 49 of the United States Code (U.S.C.) 41714 (h)(5)(A) amends the definition of a limited incumbent carrier, as set forth in 14 CFR 93.213(a)(5), from a carrier with fewer than 12 slots to a carrier with fewer than 20 slots. For the purposes of this subpart and the lottery, the definition of a limited incumbent carrier, as amended above, includes slots and slot exemptions issued by the Department of Transportation under 49 U.S.C. 41714 *et seq.* The slots to be reallocated by this lottery do not represent new airport capacity and are slots that have previously been allocated to carriers but voluntarily returned to the FAA, withdrawn by the FAA for nonuse under the provisions of 14 CFR 93.227, or allocated on a temporary basis and recalled by the FAA for permanent allocation by lottery. A total of nine daily commuter slots in the 2100 hour and six daily air carrier slots in the 2100 hour are currently available for allocation by this lottery. A final list of slots available for selection will be announced at the lottery before eligible carriers make any selections.

The FAA notes that two additional 2100 hour air carrier slots remain allocated to Midwest Airlines (formerly Midwest Express) on a temporary basis and will not be included in this lottery. In Order No. 99–11–4, the Office of the Secretary of Transportation granted Midwest an exemption under the authority of 49 U.S.C. 41714(d) to utilize those 2100 hour slots for a mid-day Milwaukee roundtrip in the 1400 and 1500 hours. Unlike the other carriers for which temporarily allocated slots in the 2100 hour have been withdrawn for permanent allocation by this lottery, Midwest would be uniquely disadvantaged if its two temporarily allocated slots were withdrawn. Other carriers are operating these slots in the later portion of the 2100 hour and could move their operation to the 2200 hour where there are slots available for permanent allocation (pursuant to 14 CFR 93.226(a)(3)), which would not significantly alter their DCA operations or necessarily force a reduction in service. Midwest, alternatively, has retimed these slots to early time periods during the day, which precludes simply adjusting the timing of these operations and could in fact result in the cancellation of this service. Also, Midwest is a limited incumbent carrier at the airport, which specifically is a class of carrier for which the provisions of the lottery were intended to benefit. Consequently, we find that these special circumstances warrant not withdrawing the two temporarily allocated slots in the 2100 hour from Midwest at this time.

The FAA has notified the carriers that currently have temporarily allocated weekday slots at DCA that they must return the slots to the FAA by September 30, 2003. This means that some of the slots included in the lottery are currently temporarily allocated and may not be available until after that date. However, some slots are available for allocation immediately following the lottery and carriers may return other slots prior to September 30. The FAA will work to accommodate carriers that want to start service with available slots before October 1.

Issued on July 1, 2003 in Washington, DC.

Andrew S. Steinberg,

Chief Counsel.

[FR Doc. 03–17254 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seat Certification Conference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public conference.

SUMMARY: This notice announces a public conference that the Federal Aviation Administration (FAA) is holding to present its views and hear comments from the public concerning issues relating to seat certification processes for transport category airplanes.

DATES: The conference will be held in Seattle, Washington, on September 17–18, 2003, beginning at 8:30 a.m.

Registration: Registration will begin at approximately 7:30 a.m. on Wednesday, September 17. If you plan to attend the conference, you are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information.

ADDRESSES: The conference will be held at the Holiday Inn Select Hotel, One South Grady Way, Renton, WA 98055 telephone (425) 226–7700. We have reserved a block of guest rooms for the conference at the Holiday Inn Select Hotel at a group rate. This block of rooms will be held until September 10, 2003. You should contact the hotel directly for reservations and identify yourself as a participant in the FAA Public Technical Conference to ensure proper credit.

FOR FURTHER INFORMATION CONTACT: Jim Cashdollar, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2785; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: Section 757 of Public Law (Pub. L.) 106–81, The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, required the FAA to establish a government-industry team to simplify the seat certification process for transport category airplanes. The FAA established this team and has been working for over two years to improve and simplify the process of seat certification in accordance with the Act. One of the actions the team recommended is the hosting of an annual conference to provide information to the public regarding accomplishments to date and to promote standard application of requirements and certification processes. The first annual conference was held March 7, 2002.

Participation at the Conference

Although the primary purposes of the conference is to convey information regarding the simplification of seat certification processes, presentation by the public will be accommodated at the conference to the extent that time allows. If you are interested in presenting material or oral statements, you should submit your request, along with any presentation materials, to the FAA prior to August 15, 2003. Submit your request to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**, along with an estimate of the time needed for your presentation. Requests received after August 15, 2003, will be considered and may be scheduled, time permitting, during the conference. Every effort will be made to accommodate as many presenters as possible in the time allotted.

Conference Agenda

A preliminary agenda will be available for review at the following website by July 1, 2002: *http://www.faa.gov/certification/index-tad.htm*. We will update the agenda posted on the conference Web site periodically as conference participants provide further details of their presentations.

Conference Procedures

The following procedures are established to facilitate the conference:

- Attendance at the conference on September 17 and 18 is open to the public, but will be limited to the space available.
- There will be no admission fee or other charge to attend or participate in the conference. The opportunity to comment on the presentations will be available to all persons, subject to availability of time.
- The conference is primarily designed to provide information to the public concerning issues related to seat certification processes. As such, the conference will contain detailed presentations by FAA and industry participants regarding the accomplishments to date, as well as explanations of recently published documents.
- The conference will be conducted in an informal manner. Participants may ask questions to clarify statements made during the presentations.
- Representatives of the FAA will preside over the conference. A panel of FAA and industry personnel involved in this issue will be present.
- Statements made by FAA members of the conference panel are intended to facilitate discussion of the issues or to clarify issues. Unless stated as such, these statements should not necessarily be construed as an FAA position.
- An individual, whether speaking in person or in a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, additional time may be allotted.
- The FAA will try to accommodate all questions, time permitting.
- The FAA will review and consider all material presented by participants at the conference. Participants are requested to provide an electronic copy of all presentation materials for use during the conference to the individual listed above under the heading **FOR FURTHER INFORMATION CONTACT**. Hard copies may be provided to the audience at the discretion of the participant.

Issue in Renton, WA, on June 25, 2004.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17364 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson and Clearfield Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued January 17, 2002) to prepare an Environmental Impact Statement for a proposed highway project within the study area of U.S. 219 (eastern terminus), S.R. 0830 (western terminus), Interstate 80 (southern terminus) and the DuBois-Jefferson Airport (northern terminus).

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, 5th Floor, Harrisburg, PA 17101–1720, Telephone (717) 221–3411 or Mark S. Rozich, P.E., Project Manager, Pennsylvania Department of Transportation, District

10–0, Route 286 South, PO Box 429, Indiana, Pennsylvania 15701, (724) 357–2852.

SUPPLEMENTARY INFORMATION: Social, cultural and natural analyses have indicated that there will be no significant impacts associated with this project. An Environmental Assessment will be prepared.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: July 2, 2003.

David C. Lawton,

FHWA Assistant Division Administrator, Harrisburg, PA.

[FR Doc. 03–17354 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on a Light Rail Transit Extension From Sierra Madre Villa Station in Pasadena to Montclair in Metropolitan Los Angeles, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Los Angeles to Pasadena Metro Blue Line Construction Authority (referred to hereafter as the Gold Line Construction Authority) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transit improvements between Pasadena and Montclair in Los Angeles and San Bernardino counties in California. The EIS will be prepared as a joint EIS and Environmental Impact Report (EIR) to satisfy the requirements of both NEPA and the California Environmental Quality Act (CEQA).

The purpose of this notice is to notify interested individuals, organizations, and business entities, affected Native American Tribes, and Federal, State, and local governmental agencies of the intent to prepare an EIS/EIR and to invite participation in the study. At present, four alternatives are proposed for evaluation in the EIS/EIR. These alternatives were developed during a Planning Alternatives Analysis undertaken by the Gold Line Construction Authority and the San Gabriel Valley Council of Governments (SGVCOG) in 2001–2002. In addition, reasonable alternatives identified through the scoping process will be evaluated in the EIS/EIR.

Scoping will be accomplished through correspondence and discussions with interested persons, organizations, and Federal, State, and local agencies, and through public and agency meetings. FTA intends to invite the SGVCOG, the San Bernardino Associated Governments (SANBAG), the Los Angeles County Metropolitan Transportation Authority (LACMTA), and the Federal Railroad Administration to be cooperating agencies in preparing the NEPA documents.

DATES: *Comment Due Date:* Written comments on the scope of the EIS/EIR, including the alternatives and impacts to be considered, must be received no later that August 1, 2003. Written comments should be sent to the Gold Line Construction Authority at the address given below in **ADDRESSES.**

Scoping Meeting Dates: Four public open-house scoping meetings will be held from 5 p.m. to 8 p.m. on July 15, 16, 17, and 21, 2003 at locations given below in **ADDRESSES.** An interagency scoping meeting will also be held on July 22, 2003, from 2 p.m. to 5 p.m. at the Gold Line Construction Authority offices, 625 Fair Oaks Avenue, Suite 200, South Pasadena, CA 91030

ADDRESSES: Written comments should be sent to Susan Hodor, Gold Line Construction Authority, 625 Fair Oaks Avenue, Suite 200, South Pasadena, California 91030; phone: (626) 403–5500; fax: (626) 799–8599. Information on the project may be obtained from the Gold Line Construction Authority by faxing a request to Susan Hodor at (626) 799–8599 or by e-mail at *shodor@metrogoldline.org* or by visiting the project Web site at *http://www.metrogoldline.org*.

The public open-house scoping meetings will be held at the following four locations. Identical information about the proposed project will be provided at each of the meetings and interested parties may participate at any of the meetings. There will be no formal presentation at the open-house scooping meetings; members of the public are invited to attend at any time between 5 p.m. and 8 p.m. on these dates:

July 15, 2003: City Hall, City of San Dimas, 245 E. Bonita Ave., San Dimas, CA 91773.

July 16, 2003: City Hall, City of Claremont, 207 Harvard Ave., Claremont, CA 91711.

July 17, 2003: Public Library—Community Room, City of South Pasadena, 1115 El Centro Street, South Pasadena, CA 91030.

July 21, 2003: City Hall, City of Arcadia, 240 W. Huntington Drive, Arcadia, CA 91007.

All meeting locations are accessible to people with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter or a translator, should contact Susan Hodor at (626) 403–5500 at least 48 hours in advance of the meeting so that arrangements can be made.

FOR FURTHER INFORMATION CONTACT: Mr. Ervin Poka, Team Leader, or Mr. Ray Tellis, Program Specialist, FTA/FHWA Metropolitan Office, 888 S. Figueroa St. (Suite 1850), Los Angeles, California 90017; phone: (213) 202–3950; fax: (213) 202–3961.

SUPPLEMENTARY INFORMATION:

I. Description of Study Area and Scope

The purpose of the proposed action is to improve east-west mobility across the 24-mile long corridor in the San Gabriel Valley, to relieve congestion on existing transportation facilities, to increase connections to work and educational destinations within the San Gabriel Valley and the Los Angeles region, to support economic revitalization in each city along the corridor, and to contribute to the preservation and enhancement of the natural environment. The corridor includes the cities: Pasadena, Arcadia, Monrovia, Duarte, Irwindale, Azusa, Glendora, San Dimas, La Verne, Pomona, Claremont, and Montclair; and the counties: Los Angeles and San Bernardino.

II. Alternatives

The alternatives proposed for evaluation in the EIS/EIR were developed during a Planning Alternatives Analysis that began in September 2001 and continued through June 2002. The Planning Alternatives Analysis can be reviewed on the project Web site: *http://www.metrogoldline.org.* The Planning Alternatives Analysis looked at transportation conditions and possible solutions for improving mobility across the 24-mile long corridor from Pasadena to Claremont. Seven alternatives were examined in this study and screened down to a Locally Preferred Alternative (LPA) selected by the Gold Line Construction Authority and the San Gabriel Valley Council of Governments (SGVCOG). The LPA is a continuation of the light rail transit (LRT) technology from the existing Sierra Madre Villa LRT station in Pasadena to the Claremont Transit Center. The Sierra Madre Villa LRT

station is the eastern terminus of the ''Phase I area'', in which LRT service was implemented from Los Angeles, through South Pasadena, to Pasadena. A further extension to the City of Montclair was subsequently added to the scope of the EIS/EIR.

The EIS/EIR will evaluate a No-Action alternative, a Transportation System Management/Transportation Demand Management (TSM/TDM) alternative, the LRT LPA to Montclair, and a shorter LRT alternative from the existing Sierra Madre Villa station to the City of Irwindale. Alternative locations for a LRT maintenance and storage facility will also be evaluated. The LRT alternatives would use the former BNSF railroad right-of-way now owned by the Gold Line Construction Authority and the San Bernardino Associated Governments (SANBAG). There are still a few freight movements that occur on the railroad line. The EIS/EIR will examine operating scenarios to determine whether time-separated joint-use can occur or whether freight operations must be supplanted. The No-Action Alternative is the continuation of existing bus service policies in the study area. Under the No-Action Alternative, increases in service would track with increases in demand due to population or employment growth in the area, in accordance with current transit service policies. The TSM/TDM Alternative consists of low-cost mobility improvements that attempt to serve the project purpose and need without building a transit guideway. The TSM/TDM alternative will be developed by the Gold Line Construction Authority in consultation with FTA to serve as the New Starts baseline for comparing the LPA to other projects nationwide competing for New Starts funding. Any additional alternatives that emerge during the scoping of the EIS/EIR, especially alternatives that reduce costs or impacts while providing comparable transportation benefit, will also be considered.

III. Probable Effects

The Planning Alternatives Analysis included a screening process to identify potential environmental impacts. This screening indicated the areas of probable effects of the project would be air quality, cultural resources, land use, noise and vibration, and traffic. Most impacts appear likely to occur in the vicinity of proposed stations and at the maintenance yard sites. Noise impacts, however, are possible along the entire corridor because of numerous at-grade crossings that would require the sounding of warning horns and the actuation of grade-crossing warning devices as LRT vehicles move through the intersection. The full range of environmental topics will be evaluated in the EIS/EIR. The EIS/EIR will also evaluate whether the proposed LRT extension would generate environmental impacts in the Phase I area (Los Angeles, South Pasadena, and Pasadena).

IV. FTA Procedures

In accordance with FTA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the conformity requirements of the Clean Air Act, section 404 of the Clean Water Act, Executive Orders 11988, 11990 and 12898 regarding floodplains, wetlands, and environmental justice, respectively, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extent practicable during the NEPA process.

The Draft EIS/EIR for the Gold Line Light Rail Extension from the Sierra Madre Villa Station in Pasadena to Montclair will be based on conceptual engineering of the alternatives, including stations, maintenance and storage facilities, and alignment options. Station designs, maintenance and storage facility layouts, and alignment options as well as operational elements, will be refined to minimize and mitigate any adverse impacts.

After its publication, the Draft EIS/EIR will be available for public review and comment, and one or more public hearings will be held. The actions taken in response to the comments on the Draft EIS/EIR will be presented in the Final EIS/EIR, which will be based on preliminary engineering of the LPA and other surviving alternatives.

Issued on: July 2, 2003.

Leslie T. Rogers,

Regional Administrator.

[FR Doc. 03–17366 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–57–P

MARITIME ADMINISTRATION

[Docket Number: MARAD 2003–15559]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CHIMERA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15559 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 15559. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CHIMERA is:

Intended Use: ''Uninspected power vessel, six passengers or less for hire.''

Geographic Region: ''a. Coast of Maine, b. U.S. East Coast Maine to Florida, very occasionally.''

Dated: July 2, 2003.
By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–17284 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–81–P

MARITIME ADMINISTRATION

[Docket Number: MARAD 2003–15560]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HDV–35.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15560 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15560. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HDV–35 is:

Intended Use: ''Research and development craft-prototype for new technology being developed by Navatek Ltd.''

Geographic Region: ''Los Angeles, CA and Hawaii''.

Dated: July 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–17285 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–81–P

MARITIME ADMINISTRATION

[Docket Number: MARAD 2003–15555]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LIVIN' DREAMS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15555 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15555. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LIVIN' DREAMS is:

Intended Use: ''Carry passengers 6 or less.''

Geographic Region: ''1. BAHAMAS AND FLORIDA 2. CT AND RI 3. U.S. VIRGIN ISLANDS.''

Dated: July 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–17280 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–81–P

MARITIME ADMINISTRATION

[Docket Number: MARAD 2003–15554]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RAVEN'S DANCE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15554 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15555. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RAVEN'S DANCE is:

Intended Use: ''Sailing charter.''

Geographic Region: ''Prince William Sound, Alaska, Alaska Northeast Gulf Coast.''

Dated: July 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–17279 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–81–P

MARITIME ADMINISTRATION

[Docket Number: MARAD 2003–15558]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RHUMB LINE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15558 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15558. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RHUMB LINE is:

Intended Use: ''Skippered sailboat charters with no more than 5 passengers for hire. The charters are mainly for persons interested in a sailing adventure and learning boat handling, navigation, seamanship and other boat skills. Sale of any fish caught during charter will not be permitted. The cruises will typically be no more than two weeks but probably a week or less during the June—September season.''

Geographic Region: ''All navigable Washington state waters except the Columbia river and inland lakes and rivers; all navigable waters of British Columbia, Canada; all navigable waters of Alaska south of Cape Spencer except inland lakes and rivers.''

Dated: July 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–17283 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–81–P

MARITIME ADMINISTRATION

[Docket Number: MARAD 2003–15557]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SAVANNAH.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15557 at

http://dms.dot.gov. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15557. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SAVANNAH is:

Intended Use: ''Nature cruises.''

Geographic Region: ''Maine to Florida.''

Dated: July 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–17282 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–81–P

MARITIME ADMINISTRATION

[Docket Number: MARAD 2003–15556]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Storm Bay.*

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15556 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15556. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Storm Bay* is:

Intended Use: ''To operate coastwise charters as an uninspected vessel, no more than six passengers.''

Geographic Region: ''Coastal Massachusetts (predominantly Nantucket sound), and the U.S. Virgin Islands.''

Dated: July 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–17281 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service; Notice of Meeting

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Notice is given of a meeting of the President's Commission on the United States Postal Service.

DATES: The meeting will be held on Wednesday, July 23, beginning at 9 am.

ADDRESSES: The meeting will be held at the Ronald Reagan Building and International Trade Center, Polaris Suite (Concourse Level C), 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roger Kodat, Designated Federal Official, 202–622–7073.

SUPPLEMENTARY INFORMATION: At the public meeting, the Commission will review and discuss a draft Commission report. Seating is limited.

Dated: July 2, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–17278 Filed 7–8–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1000

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1000, Ownership Certificate.

DATES: Written comments should be received on or before September 8, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Ownership Certificate.

OMB Number: 1545–0054.

Form Number: 1000.

Abstract: Form 1000 is used by citizens, resident individuals, fiduciaries, and partnerships in connection with interest on bonds of a domestic, resident foreign, or nonresident foreign corporation containing a tax-free covenant and issued before January 1, 1934. IRS uses the information to verify that the correct amount of tax was withheld.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Responses: 1,500.

Estimated Time Per Response: 3 hours, 23 minutes.

Estimated Total Annual Burden Hours: 5,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–17387 Filed 7–8–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 131

Wednesday, July 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non–Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Continuous Aimpoint Tracking System

Correction

In notice document 03–16877 beginning on page 39901 in the issue of Thursday, July 3, 2003, make the following correction:

On page 39901, in the third column, in the **SUMMARY** section, in the fourth line, the U.S. Patent Application number ''101/103,748'' should read ''10/103,748.''

[FR Doc. C3–16877 Filed 7–8–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

[CFDA 84.215H]

Office of Safe and Drug-Free Schools—Foundations For Learning Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Correction

In notice document 03–16141 beginning on page 38026 in the issue of Thursday, June 26, 2003 make the following corrections:

1. On page 38027, in the first column, in the third line, ''July 30, 2003'' should read ''August 4, 2003''.

2. On the same page, in the same column, in the fifth line, ''August 30, 2003'' should read ''September 4, 2003''.

[FR Doc. C3–16141 Filed 7–8–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agenices in Calendar Year 2002

Correction

In notice document 03–15209 beginning on page 37208 in the issue of Monday, June 23, 2003 make the following correction:

On page 37242, in the table, in the second column, in the fourth line, ''March 19, 2003'' should read '' March 19, 2002''.

[FR Doc. C3–15209 Filed 7–8–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 9, 2003

Part II

Department of Labor

Order of Succession to the Secretary of Labor and Continuity of Executive Direction; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 4–2003]

Order of Succession to the Secretary of Labor and Continuity of Executive Direction

1. *Purpose.* To provide for succession to act as Secretary of Labor in case of death or resignation of the Secretary, or if the Secretary is otherwise unable to perform the functions and duties of the office, including in case of absence or sickness; to provide lines of succession for executive continuity within the Department and its Agencies during vacancies arising in a period of national emergency or in the course of business; and to identify the first assistant to those officers of the Department whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate.

2. *Authority and Directives Affected.* This Order is issued pursuant to Executive Order 13245, the Federal Vacancies Reform Act of 1998 (the FVRA) (codified generally at 5 U.S.C. 3345, *et seq.*); the Act of March 4, 1913, as amended; the Act of April 17, 1946; Reorganization Plan No. 6 of 1950; Reorganization Plan No. 1 of 1958; Reorganization Plan No. 1 of 1973; Federal Civil Defense Act of 1950; Disaster Relief Act of 1974; Executive Order 12656; and Executive Order 12148.

Secretary's Order 2–2001 is canceled. All agency delegations in conflict with this Order and its Attachment are hereby superseded.

3. *Background.* Following the 1998 enactment of the Federal Vacancies Reform Act, the order of succession of officers to act as Secretary of Labor in periods of vacancy was determined by Secretary's Order 2–2001 which was issued under Executive Order 10513 (January 19, 1954). On December 18, 2001, Executive Order 13245 provided a new order of succession to the position of Secretary of Labor.

4. *Order of Succession.* In accordance with Executive Order 13245 and the FVRA, in case of absence, sickness, resignation, or death and during periods of national emergency, the functions and duties of the officers of the Department of Labor and their respective responsibilities for operational management will be performed in an acting capacity by the incumbents of the positions designated in the following orders of succession:

a. To the Secretary of Labor

(1) Deputy Secretary of Labor;

(2) Solicitor of Labor;

(3) Assistant Secretary of Labor in charge of Administration and Management;

(4) Assistant Secretary of Labor in charge of Policy;

(5) Assistant Secretary of Labor in charge of Congressional and Intergovernmental Affairs;

(6) Assistant Secretary of Labor in charge of the Employment and Training Administration;

(7) Assistant Secretary of Labor in charge of the Employment Standards Administration;

(8) Assistant Secretary of Labor in charge of the Employee Benefits Security Administration;

(9) Assistant Secretary of Labor for Occupational Safety and Health;

(10) Assistant Secretary of Labor for Mine Safety and Health;

(11) Assistant Secretary of Labor in charge of the Office of Public Affairs;

(12) Assistant Secretary of Labor for Veterans Employment and Training; and

(13) Assistant Secretary of Labor in charge of the Office of Disability Employment Policy.

However, no individual who is serving in an acting capacity in any of the above positions shall act as Secretary pursuant to this Order.

b. To All Other PAS Positions and Heads of Other Principal Organizational Units

(1) There are offices and agencies within the Department of Labor headed by officers whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate (PAS). In the event of a vacancy in any of these PAS positions, the FVRA provides that except in certain narrow circumstances, the ''first assistant [to the PAS position] shall perform the functions and duties of the [PAS position] temporarily in an acting capacity'' (subject to certain time limitations), unless and until the President makes an alternative designation under the FVRA. The functions and duties of the PAS officers of the Department and the operational management of the respective agency will be performed by the incumbent first assistant to the PAS position, as designated in the Memorandum attached to this Order.

(2) In the event that (a) there is a vacancy in the position of the first assistant, or (b) the first assistant position is occupied by a person who is statutorily barred from serving as an acting officer, the operational management of the agency headed by the PAS shall be performed by the person whose designation closest follows that of the first assistant, unless and until the President makes an alternative designation under the FVRA. However, the ''functions and duties'' of the PAS may not be performed by any person other than the person serving in an acting capacity (or, in the absence of an acting officer, by the Secretary pursuant to the FVRA). The ''functions and duties'' are those non-delegable responsibilities (a) established by law (statute or regulation); and (b) required to be performed by, and only by, the PAS.

(3) The Memorandum described in Section 3(b)(1) above, shall include succession to the heads of other Departmental organizational units that report to the Secretary.

(4) Nothing in this Order or the Memorandum shall: (1) Be construed to override the provisions in the FVRA with respect to the Inspector General or the Chief Financial Officer (5 U.S.C. 3348(e)); or (2) limit the Secretary's authority to reassign functions or duties of officers unless otherwise precluded by law or regulation.

(5) That Memorandum shall be published in the **Federal Register** and codified in the Department of Labor Manual Series. It is also subject to periodic revision by the Secretary, as necessary, and is effective on the date indicated above.

5. *Effective Date.* This Order is effective immediately.

Dated: June 30, 2003.

Elaine L. Chao,

Secretary of Labor.

Attachment—Memorandum for DOL Executive Staff

June 30, 2003.

From: Elaine L. Chao

Subject: To Provide for the Order of Succession for Executive Continuity

This memorandum is issued pursuant to Secretary's Order 4–2003 and the authorities cited therein, in order to provide lines of succession in case of absence, sickness, resignation, or death of agency heads and during periods of national emergency declared by the President and to provide for ongoing operational management of agency programs and personnel.

Functions and duties and ongoing operational management responsibilities of the officers of the Department whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate (PAS), will be performed in an acting capacity by the below designated ''first assistants,'' unless and until the President makes an alternative designation under the Federal Vacancies Reform Act of 1998 (FVRA).[1] Functions and

[1] The first assistants are designated in the list that follows as the position designated immediately below the PAS or non-PAS agency head position title.

duties are those non-delegable responsibilities established by law (statute or regulation) and required to be performed by, and only by, the PAS.

In the event that the first assistant does not serve or is barred from serving, unless and until the President makes an alternative designation under the FVRA, the person whose designation closest follows that of the first assistant shall perform the operational management of the agency. However, the functions and duties of the PAS may not be performed by any person other than the person serving in an acting capacity, in accord with FVRA (or, in the absence of an acting officer, by the Secretary pursuant to the FVRA).

The Office of the Chief Information Officer and the Bureau of International Labor Affairs, which are not covered by the statute, (because they are not headed by PAS positions) are included in this memorandum for the purpose of consolidating the presentation of the Department's program for establishing orderly internal succession in the event of vacancies.

This memorandum supersedes all prior inconsistent agency delegations. Agency Heads shall assure that agency delegations, position descriptions, and other pertinent documents are maintained consistently with the designations provided below. Any modifications to the Order of Succession specified in this memorandum are solely reserved to the Secretary.

This memorandum shall be published in the **Federal Register** and codified in the Department of Labor Manual Series. This memorandum is subject to periodic revision by the Secretary, as necessary, and is effective on the date indicated above.

Designation of Agency First Assistant [1] and Order of Succession

A. PAS Positions Under the Secretary of Labor

Deputy Secretary of Labor:

Designation to be made by Presidential direction, as provided in 5 U.S.C. § 3345.

Solicitor of Labor:

Deputy Solicitor for National Operations
Deputy Solicitor for Planning and Coordination
Deputy Solicitor for Regional Operations

Assistant Secretary for Administration and Management:

Deputy Assistant Secretary for Operations
Deputy Assistant Secretary for Budget and Strategic and Performance Planning
Deputy Assistant Secretary for Security and Emergency Management

Assistant Secretary for the Employee Benefits Security Administration:[2]
Deputy Assistant Secretary for Policy
Deputy Assistant Secretary for Program Operations

Assistant Secretary for the Employment Standards Administration:

Administrator of the Wage and Hour Division
Deputy Assistant Secretary
Deputy Assistant Secretary for Federal Contract Compliance
Deputy Assistant Secretary for Labor-Management Programs
Director, Office of Workers' Compensation Programs

Assistant Secretary for the Employment and Training Administration:

Deputy Assistant Secretary [3]
Deputy Assistant Secretary
Deputy Assistant Secretary

Assistant Secretary for the Mine Safety and Health Administration:

Deputy Assistant Secretary for Policy
Deputy Assistant Secretary for Operations

Assistant Secretary for the Occupational Safety and Health Administration:

Deputy Assistant Secretary [4]
Deputy Assistant Secretary

Assistant Secretary for the Office of the Assistant Secretary for Policy:

Deputy Assistant Secretary [5]
Deputy Assistant Secretary for Regulatory Economics and Economic Policy Analysis

Assistant Secretary for the Office of Congressional and Intergovernmental Affairs:

Deputy Assistant Secretary for Congressional Affairs
Deputy Assistant Secretary for Intergovernmental Affairs

Assistant Secretary for the Office of Disability Employment Policy:

Deputy Assistant Secretary
Director, Office of Operations

Assistant Secretary for the Office of Public Affairs:

Deputy Assistant Secretary

Assistant Secretary for the Veterans' Employment and Training Service:

Deputy Assistant Secretary
Director for Operations and Programs
Director of Resource Management

Director of the Women's Bureau:

Deputy Director [6]

Administrator of the Wage and Hour Division:

Deputy Wage and Hour Administrator

Commissioner of the Bureau of Labor Statistics:

Deputy Commissioner

Chief Financial Officer:

Deputy Chief Financial Officer

Inspector General:

Deputy Inspector General

B. Non-PAS Agency Head Positions

Deputy Under Secretary for International Affairs of the Bureau of International Labor Affairs:

Associate Deputy Under Secretary for Policy
Associate Deputy Under Secretary and Director of International Economic Affairs

Chief Information Officer:

Deputy Chief Information Officer

[FR Doc. 03–17326 Filed 7–8–03; 8:45 am]

BILLING CODE 4510–23–P

[1] The first assistants are designated in italic font immediately below the PAS or Non-PAS position title.

[2] Described as Assistant Secretary of Labor in charge of the Pension and Welfare Benefits Administration in Executive Order 13245. This agency was renamed Employee Benefits Security Administration in Secretary's Order 1–2003.

[3] This Deputy Assistant Secretary position is responsible for the formulation of policies and development of multi-year goals, objectives and strategies, among other responsibilities.

[4] This Deputy Assistant Secretary position is responsible for Congressional and intergovernmental liaison activity, among other responsibilities.

[5] This Deputy Assistant Secretary serves as liaison to the Executive Office of the President to assure Departmental policies, goals, objectives and strategies reflect the Administration's positions.

[6] This position is first assistant, pursuant to 29 U.S.C. 14.

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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